

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 4394 OF 2021

Dharmya @ Naktya Tukya Shinde	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Firoz Maner a/w Mr. Vikrant Shinde i/by Mr. Kiran N. Patil -
Advocate for the Applicant
Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 06th FEBRUARY, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP.
2. On 29/10/2018, there is an offence registered bearing C.R. No. 313 of 2018 under Section 302 of the Indian Penal Code on complaint of one Santosh Jayvant Kharat. In the intervening night of 28/10/2018 and 29/10/2018, when the first informant Santosh Kharat heard the shout of his father, he came out of the house and noticed that his mother has fallen on the ground in pool of blood. It is case of murder and hence complaint is lodged.

3. Later on Police have converted it to Section 396 of the Indian Penal Code on the basis of supplementary statement of the first informant. He noticed that the mangalsutra was snatched and some part of it was missing.

4. During investigation, the present Applicant came to be arrested alongwith four others. Police have also invoked provision of the Maharashtra Control of Organized Crime Act, 1999 for the reason that this is act of organized crime syndicate for which present Applicant is shown as leader. There is an affidavit filed thereby opposing grant of bail. In serial no. 10, there are seven CRs apart from the present CR registered against the present Applicant.

5. According to the learned Advocate for the Applicant there is absolutely no evidence to show his involvement except the reference in statement under Section 27 of the co-accused-Rohit. In that statement certain ornaments were recovered from the jeweller. Furthermore, the weapon of the offence was also recovered at the instance of the said Rohit. In that statement, the reference of the present Applicant is made. Motor cycle used in the commission of the offence is also recovered at the instance of the accused Chand @ Suraj. There is also reference of the present Applicant in it.

6. Learned Advocate for the Applicant made feeble attempt to content that this is not offence under Section 396 of the Indian Penal Code because in the F.I.R. there is a reference that ornaments were there on the body of the mother. Similar reference there in the inquest Panchnama.

7. Learned Advocate for the Applicant has relied upon the following judgments:-

(a) *Adnan Bilal Mulla Vs. State of Maharashtra*¹

(b) *State of Maharashtra Vs. Shiva @ Shivaji Ramaji Sonawane and Ors.*²

(c) *Bhupendra @ Golu s/o. Suryakant Borkar Vs. State of Maharashtra*³

(d) *Parveen alias Sonu Vs. State of Haryana*⁴

8. At this stage, it can be said that application of Section 396 of the Indian Penal Code is justified because there is supplementary statement of the first informant.

9. It is true that there are seven cases against the Applicant. The Police may be justified by invoking the provision of the Maharashtra Control of Organized Crime Act, 1999. The detention for the present Applicant depends upon what is material against the

1 2010 ALL MR (Cri) 1212

2 2015 ALL MR (Cri) 3310 (S.C.)

3 2017 ALL MR (Cri) 1561

4 AIR 2022 Supreme Court 270

Applicant. As contended, there is no eye witness to the incident. There is no confession recorded under Section 18 of the Maharashtra Control of Organized Crime Act. Reference in statement under Section 27 of the Indian Evidence Act and it can be used against co-accused under Section 30 of the Indian Evidence Act. This could have been considered if there is corroborating material.

10. It is true that there is a prohibition for grant of bail under Section 21 of the Maharashtra Control of Organized Crime Act. The Court has to see that there are no chance that the Applicant will repeat the offence as there is previous history. However considering the absence of material, I am inclined to grant him bail subject to heavy conditions.

11. The address of the Applicant is shown as Sangli but through his Advocate he states that he is resident of Phaltan, District Satara. Hence following Order :-

ORDER

- (i) The Applicant-Dharmya @ Naktya Tukya Shinde arrested in C.R. No. 313 of 2018 registered with Lonand Police Station be released on bail on furnishing P.R. bond and surety bond in the sum of Rs. 50,000/-.

- (ii) Applicant is directed to furnish the local surety from Satara district.
- (iii) At the time of furnishing the bail, the Applicant is directed to produce documents to show the place of his residence in Phaltan, District Satara.
- (iv) Applicant is directed to give attendance to the Lonand Police station on every Monday and Thursday from 10 am to 12 noon for one year.
- (v) Applicant shall not threaten the prosecution witness.
- (vi) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail.

12. It is made clear that the observations made herein are prima facie, and the trial court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

13. Application is disposed of in the aforesaid terms.

14. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]