

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPLICATION (BA) NO. 316/2023

Chanda wd/o Manoj Paliwal

..Applicant

versus

The State of Maharashtra

Th: Its PS MIDC Nagpur, Dist. Nagpur.

..Respondent

.....
Mr.C.R.Thakur, Advocate for the applicant

Mr.S.M.Ghodeswar, APP for Respondent
.....

CORAM: ANIL L. PANSARE, J.

DATED : 20th April, 2023.

PC:

Heard both sides.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 26.11.2022 in Crime No. 872/2022 registered with Police Station, MIDC Nagpur, Dist. Nagpur for the offence punishable under Section 306 of the Indian Penal Code.

3. The informant is the son and also a witness to the abuses hurled by the applicant to his mother, that too, twice in a day, that resulted in committing suicide by his mother.

4. The FIR indicates that on 20.11.2022 when the informant and his mother were present in the home, husband of the paternal aunt of the informant, namely, Dalchand Paliwal visited his house for work. When he was talking with the informant and his mother, the applicant suddenly came there and started loud altercation with the informant and

his mother. The applicant abused his mother by saying that she was doing a work of prostitution with the relative in the house. The informant's mother made an attempt to placate her as she thought that someone might hear the abuses. The applicant made wild allegations against the informant's mother. The applicant went back, but returned back with informant's grandmother after some time. Both of them have beaten the informant's mother and hurled abuses by passing obscene remarks. The informant's mother could not sustain the embarrassment and, therefore, committed suicide by hanging herself with string. While doing so, she appears to have recorded a video blaming the applicant for suicide. Thus, the reason for committing suicide by the informant's mother has been attributed to the applicant.

5. The learned counsel for the applicant submits that charge-sheet has been filed and in view of change in circumstance, the applicant approached the trial Court, but the trial Court rejected the application. These submissions are put forth for the reason that this Court vide order dated 18.01.2023, has rejected the application filed by the applicant u/s. 439 of Code. Obviously, at that time, the charge-sheet was not filed.

6. The contention of the applicant is that the applicant had no intention to instigate the deceased to commit suicide.

7. This Court had held that the said aspect of intention cannot be gathered at the stage of considering bail application and will have to be left to be decided by the trial Court. The submissions of learned APP were found meritorious on the ground that the intention can only be

gathered when the relevant witnesses are examined. While rejecting the application, this Court has observed in paragraph 8, as under :-

“8. The fact, however, remains that the deceased has blamed the applicant for her suicide. The son of deceased has also witnessed the abuses. In normal circumstances, if a mother is abused with obscene remarks and her character is assassinated, as mentioned above, that too, in the presence of her son, the person hurling such abuses must be believed to have knowledge that such vulgar abuses may push the person to commit suicide.”

8. The learned counsel for the applicant submits that the charge-sheet has been filed and there is change in circumstance. However, there is nothing in the charge-sheet to show additional ground that would adversely affect the prosecution's case. He, however, submits that the applicant being woman, despite having a strong *prima facie* case against her, the Court can release the persons like the applicant on bail. The law on the said point is well-settled and that the learned counsel for the applicant is correct to that extent.

9. The learned counsel for the applicant submits that the applicant has two children - a son and a daughter. The daughter of the applicant is handicapped, inasmuch as her right hand is paralysed. The disability certificate annexed with the application indicates that she suffers 70% permanent disability. The disability is described as “*Infantile Hemiplegia (R)*”. Furthermore, the daughter of the applicant is unable to maintain herself and that the applicant is a widow and is the only earning member in the family.

10. In the circumstances, the benefit of bail could only be extended to the applicant only on the ground that she is a woman and that she has two children and her daughter suffers from permanent disability to the extent of 70%. Considering the above status, no fruitful purpose will be served by keeping the applicant in incarceration.

11. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given address since long. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial.

12. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

13. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

14. Resultantly, following order is passed :-

ORDER

(i) The application is allowed.

(ii) Applicant – Chanda wd/o Manoj Paliwal, be released on bail in Crime No. 872/2022 registered with Police Station, MIDC Nagpur, Dist. Nagpur, for the offence punishable under Section 306 of the Indian Penal Code, on she executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(iii) The applicant shall, at the time of execution of bond, furnish her address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) The applicant shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offences. The applicant shall not seek adjournment, except under extreme circumstances to the satisfaction of the trial Court.

(vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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