

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

CRIMINAL APPLICATION (BA) NO.465 OF 2023

(Sharda @ Nanda w/o Manoj Wankhede Vs. The State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V. Sirpurkar, Advocate for the applicant.
Shri I.J. Damle, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 08, 2023.

Heard.

2. Present application is for grant of bail filed under Section 439 of the Code of Criminal Procedure in connection with Crime No.286/2022 registered at police station Dongaon, District Buldhana for the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

3. The applicant is arrested on 7th December, 2022. Since then she is in jail.

4. The applicant is the mother of the deceased. As per the allegation in the First Information Report is that the deceased Mayuri Manoj Wankhede is the daughter of the present applicant. On 11th November, 2022, her dead body was found floating in the well. On conducting the postmortem, it revealed that death of the deceased is caused due to strangulation. Initially, crime was registered against the unknown person.

5. During investigation, it revealed that the presence of the co-accused Manoj Sagar Wankhede who is the father of the deceased was witnessed by one of the witness near the spot of incident i.e. near the Well. The incriminating article i.e. one cable tie is also seized at the instance of the co-accused. As far as the present applicant is concerned only allegation against her is that both the applicants in furtherance of their common intention as victim was having love affair with one boy committed her murder.

6. As per the contention of the present applicant, entire case is based on the circumstantial evidence. There is no single circumstance to connect the present applicant with the alleged offence. She is implicated merely because she is the wife of the co-accused and mother of the deceased. Now, investigation is completed and charge-sheet is filed. Further custody of the present applicant is not required and hence she be released on bail.

7. Said application is strongly opposed by State on the ground that the death of the deceased is caused when she was in custody of the present applicant and the co-accused. In view of Section 106 of the Indian Evidence Act, 1872 burden is on the present applicant to explain the circumstance in which the death of the deceased is caused. The death of the deceased is caused due to strangulation. Thus, *prima facie* material is there to

connect the present applicant with the alleged offence and prays for rejection of the application.

8. Heard Shri Shirpurkar, learned Counsel for the applicant. He submitted that on the basis of the recitals of the FIR that the crime was registered initially against the unknown person. During investigation, the Investigating Officer has recorded various statements of the witnesses. None of the statements point out any circumstance against the present applicant to connect her with the alleged offence. On the contrary, the statements on record shows that initially deceased was in the house along with the present applicant. None of the statement shows that either there was any quarrel between the deceased and the present applicant or she was witnessed with the deceased proceeding at any place. Absolutely she is implicated on the surmises and conjectures and merely on suspicion. As now investigation is completed and charge-sheet is filed. Further custody of the present applicant is not required. In view of that she be released on bail.

9. Learned Additional Public Prosecutor reiterated the contention and submitted that the death of the deceased is caused when she was in the custody of the present applicant and the co-accused. The burden is on the present applicant to explain the said circumstance in view of Section 106 of the Indian Evidence Act, 1872. At the stage, *prima facie* material is against the present

applicant and hence bail application deserves to be rejected.

10. I have perused the investigation papers. It reveals that during investigation the statement of one Akash Shivajirao Jumade was recorded by the Investigating Officer whose statement shows that he has witnessed co-accused – Manoj who is the father of the deceased proceeding from the spot of incident i.e. where the dead body of the deceased was found. Moreover, self locking cable tie was also seized at his instance.

11. I have gone through the statements of the witnesses. Admittedly, none of the witnesses have pointed out any incriminating circumstance against the present applicant. The dead body of the deceased was also not found in the house but it is found in one well in the adjacent agricultural land of the father of the deceased. Thus, after going through the entire statements of the witnesses, there is absolutely no material to connect the present applicant with the alleged offence. Now, investigation is completed and charge-sheet is filed. Considering the nature of the evidence, no purpose will be served by keeping the present applicant behind bar. In view of that the application deserves to be allowed. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The applicant - Sharda @ Nanda w/o Manoj Wankhede in Crime No.286/2022

registered at police station Dongaon, District Buldhana for the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, be released on bail on executing PR. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(iv) The applicant shall attend the trial Court on each and every date.

12. The trial Court shall not be influenced by the observation made by this Court while passing the order for bail.

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*