

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

CRIMINAL APPLICATION (BA) NO. 1461 OF 2022

(Sau. Usha w/o Umesh Uike (In Jail) Vs. The State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Ms. Prajakta Chaudhari, Advocate for the applicant.
Shri N.R. Rode, Additional Public Prosecutor for the non-
applicant/ State.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 7, 2023.

This is an application filed under Section 439 of the Code of Criminal Procedure (for short “the Code”). The applicant has been arrested on 1/7/2022 in Crime No. 373/2022 registered with the Police Station – Sawangi Meghe, District – Wardha for the offences punishable under Sections 302, 326, 324 and 504 read with Section 34 of the Indian Penal Code, 1860. The First Information Report has been lodged on 30/6/2022 by the mother of the deceased. She states that on 29/6/2022 at about 8:00 pm when she was at her home, her cousin grand daughter-in-law came running in the house and stated that someone is beating Avinash – son of the informant. Accordingly, the informant and her sister-in-law rushed towards the spot. They saw that one Umesh Uike and his wife Usha Uike (present applicant) had caught hold of Avinash and that Prathmesh, who is the son of Umesh inflicted blow on the head of Avinash by means of wooden rod of Axe. Avinash fell down. Blood was oozing from the injury. The informant had also seen

knife injury caused to the stomach of Avinash. Blood was oozing from the said injury as well. Thereafter, the people nearby caught Prathmesh. Avinash succumbed to the injuries.

2] The learned Counsel for the applicant submits that all the witnesses are the relatives of the informant and are therefore interested witnesses. She further submits by referring to Section 437 of the Code that the applicant being woman, she should be released on bail. The learned Counsel for the applicant has referred to the judgment in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation And Another [(2022) 10 SCC 51]* wherein in paragraph 78, the Hon'ble Apex Court has observed as under :

“78. Section 437 of the Code empowers the Magistrate to deal with all the offences while considering an application for bail with the exception of an offence punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437, while exercising the power under Section 439. While dealing with

a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors.”

Thus, the benefit under Section 437 is to be extended to needy person but merely because the offence has been committed by a woman by itself will not make her entitled to be released on bail under Section 437 of the Code without considering the role played by such a woman so also the gravity of the offence and the manner in which the offence has been committed. Thus, the totality of the circumstances will have to be considered even in the case where the accusation is made against a woman.

3] In the present case, there are eye-witnesses to the incident. The witnesses have categorically stated that the applicant had caught hold of Avinash. This role to my mind is at par with the role played by Prathmesh who has inflicted head injury upon Avinash. By holding Avinash, the applicant has made him defenseless. In other words, Avinash was prevented from defending himself. Had his hands been free, he could have resisted the assault on his head. This confinement facilitated Prathmesh to inflict head injury to Avinash. This role by the applicant cannot be said to be of a lessor gravity. The offence has been committed by the side of the road i.e. in

the open area. A young boy has been brutally murdered by the applicant and two others.

4] Thus, there is no dispute that the offence under question is serious in nature. The evidence in the form of the First Information Report and the witness is overwhelming. The role of the applicant is clearly depicted in the statements of the witnesses. In the circumstances, merely because the applicant is a woman, she cannot be released on bail. One cannot loose sight of the fact that precious life has been taken away by the applicant and the co-accused.

5] The applicant is at liberty to apply to the learned trial Court for expeditious disposal of the case.

6] With the above liberty, the application is rejected.

(ANIL L. PANSARE, J.)

Sumit