

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1059 OF 2024

Suresh @ Chitteshwar Gulab Rathod

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Ms. Pooja S. Ingle h/f Mr. S.J. Salunke

APP for Respondent/State : Mr. S.B. Pulkundwar

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 20, 2024

PER COURT:-

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant seeks bail in Crime No.71 of 2023 registered with Talwada Police Station, District Beed for the offences punishable under Sections 302, 498-A, 323, 506 r/w 34 of the Indian Penal Code.
3. The applicant is the husband of the deceased. It has been alleged against the applicant that he was a habitual drunkard. His family members were harassing the deceased. Hence, they started residing separately. He used to beat the deceased after drinking liquor. She was consistently complaining against the applicant to her relatives. The applicant killed the deceased by smashing a stone on her head in the house when she was sleeping.

4. Learned counsel for the applicant would submit that the incident happened within the four walls of the house. The children were there in the room. However, they did not hear the noise. There was no eyewitness to the incident. The so-called witnesses came after the incident. Since their marital life was not happy, he has been falsely implicated in the crime. He is innocent and has liability to maintain the children. The statements of the witnesses have been recorded belatedly. Hence, that raises suspicion. To bolster her arguments, she relied on the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Another, (2022) 10 SCC 51. Referring to the judgment, she has argued that even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of Section 41 of Criminal Procedure Code. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. She further argued that the investigation has been completed. Nothing is to be recovered from the applicant. Therefore, he should not be further detained.

5. The above case law is on Section 41 of the Criminal Procedure Code which provides for the circumstances when the

accused should or should not be arrested. Further, it has been observed in the said case that delay on the part of the Court or prosecution in conclusion of the trial, appeal or revision, the trial may be directed to be disposed of quickly. This citation is an encyclopedia on granting bail and speedy trials. It has also discussed on the conditions imposed upon the accused while granting bail. Issuance of warrant in lieu of, or in addition to, summons, presumption of innocence etc.

6. Learned APP has strongly opposed the application. He would submit that when the deceased was killed, the applicant was in the house. A big stone was lying near the dead body. The accused killed his wife by that stone. The children are the witnesses to the incident. It is a clear case of murder. The witnesses are supporting the prosecution. The cause of death is head injury. The deceased has around 15 injuries. Her frontal and parietal bone were fractured. She has also the injuries like CLW and abrasions on her eyebrows, cheek, shoulder, wrist joint etc. The circumstantial evidence against the applicant is strong. The accused has to discharge the burden under Section 106 of the Indian Evidence Act. Considering the conduct of the applicant, it would be harmful to release him on bail. He may cause injuries to the small children, who are witnesses to the incident.

7. Perused the papers. The prosecution has evidence that at the time of the incident, the applicant and the deceased were under

one roof. Immediately after the incident, the applicant was found present near the dead body. The children were the best witness. When the children started crying, the neighbours came and they also saw the applicant present near the dead body. The circumstances supports the prosecution case. The offence is obviously serious. The possibility of danger to the witnesses cannot be ruled out. Considering the material against him, the Court is of the view that this is not a fit case to exercise the powers under Section 439 of the Criminal Procedure Code. Hence, the application stands dismissed.

(S.G. MEHARE, J.)