



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

48 BAIL APPLICATION NO. 2350 OF 2023

Shaikh Alim Shaikhlal
VERSUS
The State Of Maharashtra

...
Advocate for Applicant : Mr. Sudarshan J. Salunke
APP for Respondent: Mr. Mukesh K. Goyanka
Advocate to assist the A.P.P. : Mr. Ravindra V. Gore

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 15th JANUARY, 2024.

PER COURT :-

1. The applicant is seeking bail under section 439 of Cr.P.C. in connection with crime No. 0413 of 2023 registered with Ambajogai police station, District Beed. for the offences punishable under Sections 302, 120-B, 201 r.w. 34 of I.P.C. His application bearing criminal bail application No. 499 of 2023 came to be rejected by the learned Additional Sessions Judge, Ambajogai, vide order dated 05.12.2023.

2. It is averred in the report that deceased Jakia Begum was residing with the applicant, who is her son-in-law. It was because she was deserted by her husband and therefore, in compelling circumstances she was residing there. It is alleged that on 22.10.2023, Jakia Begum was found dead. On the next day, in the presence of informant and other relatives, the funeral on the dead body of Jakia Begum was performed. During the course of last bath

of pre-funeral, it was noticed that there was injury on her forehead and ligature marks which were noticed by one nurse Shabana, who snapped the photographs of the said injuries in her handset of mobile phone. Thereafter, last rites were performed. Thereafter, the informant went to Mumbai. On the basis of one diary found in the room of deceased Jakia Begum, it was noticed that she was harassed by the co-accused wife of the present applicant, who is her daughter, in which she made allegations that her daughter is harassing her frequently. The informant lodged the report on 03.11.2023.

3. Learned advocate for the applicants submitted that delay of more than 10 days is caused for lodging the report. Learned advocate pointed out that the written statement filed by the husband of deceased Jakia Begum in which she made allegations against the applicant that he is advocate and therefore, he is supporting his wife by filing such cases. That litigation was continued till 2022. There is no material to proceed against the applicant. The allegations are made after deliberations and afterthought. There is no motive for commission of the murder of Jakia Begum. The applicant is a practicing advocate. He has roots in the society. He will not flee away from the trial. He lastly prayed to allow the application.

4. Learned A.P.P. for the respondent-State has strongly opposed the application on the ground that the applicant is arrested in serious

crime of murder. For examining the dead body after the death of Jakia Begum, a Maulana was called instead of doctor. There are statements of one staff nurse Shabana who noticed those injuries and a doctor viz. Parvez created doubt about that death. He further pointed out the post mortem report, particularly column No.19, it is noted that "diffuse under scalp contusion over the frontal and right occipito-temporal area, reddish in color". Learned A.P.P. submitted that it is homicidal death occurred in the house of the applicant and there is no explanation on his part. The motive is that Jakia Begum was willing to perform her second marriage which opposed by the applicant. He lastly prayed to reject the application.

5. Learned advocate Mr. Gore, assisting the prosecution strongly opposed the application by pointing out the statements of witnesses. He also pointed out the photographs of the dead body. He further pointed out that diary of Jakia Begum in which she has written that her daughter, the wife of the present applicant, who is co-accused, was teasing her frequently. He submitted that there is prima facie strong evidence against the applicant. He lastly submitted to reject the application.

6. Admitted fact is that husband of Jakia Begum is also arrested who is released on anticipatory bail by this Court. He made allegations in his say that this applicant is an advocate and relative of his wife and is helping her and harassing him. The say was filed in

the proceeding of maintenance in the year 2022. However, he is also made accused in this case.

7. Perused the papers of investigation. The P.M. report shows diffuse under scalp contusion over the frontal and right occipito-temporal area, reddish in color. Jakia Begum died on 22.10.2023. However, admittedly after exhumation of dead body of Jakia Begum, post mortem was conducted on 26.10.2023. The alleged ligature marks are not found in the post mortem report. The decomposition of the dead body of Jakia Begum must have been started. The accused have not opened their defence. No doubt all these are factual aspects and meticulous consideration of the entire evidence is not permissible at the time of decision of bail application.

8. Though nurse Shabana noted alleged injuries on the person of Jakia Begum and she snapped her photographs by whatsapp mode while the last bath of her pre-funeral, it was shown on 23.10.2023 i.e. on second day of incident to Dr. Parvez. The report is not lodged promptly even though nurse Shabana noticed alleged injuries. The delay caused for lodging report is not explained. It prima facie shows that the report is lodged afterthought. So also these two witnesses are relatives of the informant.

9. As far as allegations made by deceased Jakia Begum in her diary are concerned, it does not establish essential ingredients of any

of provisions of Sections of the I.P.C. which are invoked against any of the accused. It is ultimately matter of evidence. It is cardinal principle of criminal trial that to proceed against a person there must be defined crime and prescribed punishment, as contemplated under Article 20(3) of the Constitution of India. Therefore, the arguments of the learned advocate who assists to the A.P.P. is not acceptable in this regard. The applicant is an advocate. He has roots in the society. The practical investigation of this crime is over and his custody is not required. Further considering the fact that the applicant will not flee away from trial, and the trial would take a long period, the application deserves to be allowed on certain conditions. Hence, the following order.

O R D E R

- I. Application is allowed.
- II. The applicant in connection with crime No. 0413 of 2023 registered with Ambajogai police station, District Beed. for the offences punishable under Sections 302, 120-B, 201 r.w. 34 of I.P.C. be released on bail on furnishing personal bond of Rs.25,000/- with one surety of the like amount on following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence and also shall not pressurize the prosecution witnesses in any manner.

10. It is made clear that the observations made in this order are prima facie in nature and the trial court shall not get influenced by the said observations while concluding the trial.

(SANJAY A. DESHMUKH, J.)

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