

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3926 OF 2021

Asha Shankar Gaikwad .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.2871 OF 2021
IN
BAIL APPLICATION NO.3926 OF 2021

Kishore Barku Gaikwad .. Applicant
Versus
The State of Maharashtra .. Respondent

Adv.Sabiha Ansari a/w Aisha Shaikh, Tanvi Rane i/b Hulyalkar
and Associates for the applicant.
Smt.K.T Hiwrale, APP for the State.
Mr. Satish Boralkar a/w Ajit M. Savagave, Ms. Suvarna,
Intervener.
Ms. Manisha D Joshi, A.P.I. Kolsheewadi Police Station.

CORAM: BHARATI DANGRE, J.
DATED : 16th APRIL, 2024

P.C:-

1 The present application is filed by the applicant, who
is facing trial for the offence punishable under Section 302, 120
B, 201, r/w 34 of IPC along with the co-accused for causing
death of her husband Shankar on 18/05/2018.

It is the case of the prosecution that on 21/05/2018, the applicant lodged a missing complaint, stating that on 18/05/2018, her husband Shankar Gaikwad had gone to Kalubai Devi, Temple, Wai, Satara and did not return and when she tried to contact him, his mobile was switched off.

The police registered the complaint and commenced the investigation.

2 It is the prosecution case that the applicant, had entered into an agreement to dispose of the property of her husband to Pappu Builder, however her husband was not ready to perform the transaction and since some consideration was received by her, she decided to eliminate him. For this purpose, she contacted the co-accused and gave a contract for killing her husband and the amount was settled at Rs. 3,00,000/-.

In furtherance of the common intention, she is charged for administering stupefying substance to her husband and when he became unconscious, she took him in an Auto Rikshaw by pretending that she was taking him to the hospital but she left her husband in the company of the co-accused and came back home.

It is the case of the prosecution that the co-accused inflicted blow of wooden log on the head of deceased Shankar and Himanshu inflicted blow of knife. He was beheaded and head was buried and the other part of the body was thrown across.

3 In order to establish the guilt, statements of several witnesses are compiled in the charge-sheet and the complaint is lodged by Deputy P.I. Swapnil Kedar, who reported that in pursuance to the missing complaint, when inquiries were made with the brother of the deceased, Kishore, who expressed a suspicion that his sister-in-law with the aid of her regular rickshaw driver Raj eliminated his brother. Therefore, the statement of the applicant, Asha was recorded and it was revealed that she was using two mobile phones and the call details were obtained, which revealed that Asha was constantly in touch with the rickshaw driver Raj, on the date of the incident and thereafter, Himanshu Dube was called for interrogation and it was also inquired as to why he was repeatedly calling Asha Gaikwad on 18/05/2018. It was on the basis of his statement, the other accused persons were tracked and offence came to be registered.

4 In support of the prosecution case, the statement of one Vinod Bhinbhine, a relative and a resident in the neighbourhood of the deceased is also recorded.

 He state that on 18/05/2018, at around 8:00 p.m. when he was toddling his daughter in compound, one auto rickshaw without number stopped infront of house of Shankar, his uncle (Mama) and two unknown persons in the age group 22-25 were sitting in the rickshaw and give the description of the said persons.

According to Vinod in 2-3 minutes the present applicant, Asha came out of the house by holding Shankar, her husband and she took him in the auto rickshaw. According to him, Shankar was in an unconscious state but since Asha was known to be of quarrel some nature, he did not make any inquiries. On 21/05/2018, when he went to the house of the applicant, along with his wife, and was informed that on 18/05/2018, around 1:30 a.m. , Shankar had left house and did not return.

5 Statement of Jyotsana, the daughter of the applicant is also compiled in the charge-sheet and she has thrown light on the relationship shared between the deceased and the applicant. The daughter has also reflected upon the behavior of her mother. She has further stated that she used to often quarrel with her husband and she was not happy in the marriage. The daughter also state that on 15/05/2018, she along with her parents, sister and brother had gone to Jejuri in the auto rickshaw of Raj Singh and while coming back, were told that on 18/05/2018, they will visit Ekvira Devi Sthan.

On 18/05/2018 her mother disclosed to her that they have to withdraw an amount of Rs.3,00,000/- from the account of her father and Raj Singh came in his rickshaw and she accompanied her to bank of Baroda and her mother withdrew an amount of Rs.3,00,000/-. Thereafter, they returned home and her mother told Raj to go down and by concealing the money, she

followed him and gave it to him, but since she was scared, she did not questioned her.

At around 7:30 p.m. on the same day Raj Singh came with his rickshaw and she sent her along with her siblings in the said rickshaw on the pretext that they have to visit the temple and told her that they should go ahead and she would take her father to the doctor, as he was suffering from headache and they would also follow immediately. Therefore, she along with her sister Pinki, brother Pravin and friends proceeded to the temple.

On return she found her father not to be in the house and her mother gave the story that the father had left for darshan of Kalubai, but he did not return back.

6 On similar lines is the statement of Kumari Pinki, daughter of the applicant aged 14, who had also disclosed that there were CCTV cameras fitted outside the house but her mother had cut the wires attached to the cameras and she was often at loggerhead with her father. Statements of Pravin and Jayesh are also recorded.

The statement of Rambhau Pandit a Doctor is also recorded, who had stated that when Shankar was brought to his hospital by his wife he had prescribed ALPRAX-0.25 and had directed one tablet to be administered. According to him in the evening hours on 18/05/2018, Asha had brought her husband to the hospital.

7 The case of the prosecution is based on circumstantial evidence and the relevant evidence is compiled in the charge-sheet.

 The trial is in progress and three witnesses are examined till date.

8 Considering the material compiled in the charge-sheet, in my considered opinion, the applicant do not deserve her release, firstly by considering the gravity of the offence and the fact that the material on record, is sufficient to indict her for the offence, and secondly on the ground that the release of the applicant would hamper the case of the prosecution, as the witnesses are her own children, and relatives or persons residing in the neighborhood and on her release, there is every possibility, that she may pressurize the witnesses.

 However, considering the long incarceration of the applicant, and since the sessions trial is already in progress, I deem it appropriate to direct that the trial shall be concluded within period of one year from the date of passing of the order, which shall include the pronouncement of the judgment.

 Needless to state that the observation made above shall not influence the Sessions Judge.

 With the aforesaid directions, the application is rejected.

(SMT. BHARATI DANGRE, J.)