

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3951 OF 2023
IN
CRIMINAL APPEAL NO.876 OF 2019**

Rupali Uttam Khedekar
@ Rupali Balasaheb Borkar Applicant
Versus
The State of Maharashtra Respondent

Mr. Aniket Nikam, Advocate a/w. Amit Icham, Satyjeet Mane,
Dushyant Digamber, for the Applicant.

Mr. S.V. Gavand, APP for the Respondent-State.

**CORAM : M. S. KARNIK, AND
SARANG V. KOTWAL JJ.**

DATE : 12th MARCH, 2024

P.C. :

1. This Bail Application is specially assigned to this Bench though the main Appeal is listed before a coordinate Bench. Considering that this is a specially assigned matter to our Bench, we have heard the parties to decide this Bail Application.

2. The Applicant is in custody since 14.7.2014. She had earlier preferred Criminal Application (I.A.) No.1/2019 in

Criminal Appeal No.876/2019. The Division Bench of this Court (Coram:Ranjit More & M.S. Karnik, JJ.) after hearing the arguments, vide the order dated 18.11.2019 had dismissed the Application as withdrawn. The Applicant was granted liberty to apply for early hearing once the Appeal was ready for final hearing. Accordingly, learned counsel for the Applicant had applied for early hearing of the main Appeal. The Appeal is listed for final hearing, but, it has not reached the stage of final hearing. Therefore, we are considering this Bail Application.

3. Heard Shri Aniket Nikam, learned counsel for the Applicant and Shri S.V. Gavand, learned APP for the Respondent-State.

4. The Applicant was convicted by the Additional Sessions Judge, Pune vide his judgment and order dated 17.5.2019 passed in Sessions Case No.734/2014. She was convicted under Section 302 of IPC and was sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- and in default to suffer S.I. for three months.

5. The prosecution case is that the deceased Usha Bhosale was the neighbour of the Applicant. The prosecution case does not throw light on the motive behind the crime but the incident had taken place on 14.7.2014 in the flat of the present Applicant. At the time of the incident, the deceased was pregnant for six months. The allegations are that, at around noon time, the Applicant assaulted the deceased with an iron rod and committed her murder. The prosecution examined 16 witnesses during trial.

6. Learned counsel for the Applicant submitted that since there is no motive attributed to the Applicant, it could be a case of grave and sudden provocation. In any case it was a case of fight which had occurred on the spur of moment. At the highest, therefore, the offence may not be the one punishable under Section 302 of IPC. The Applicant is a lady. She is in custody for more than nine years. The case is based on the circumstantial evidence. The Appeal is not likely to be decided in the near future. He submitted that considering all these aspects, the Applicant be released on bail during pendency of

the Appeal.

7. Learned APP strongly objected to grant of bail to the present Applicant. He submitted that the nature of assault was brutal. There is strong circumstantial evidence against the Applicant. There were more than twenty injuries caused to the deceased. Therefore, considering all these facts, bail may not be granted to the Applicant.

8. We have considered these submissions and we have perused the notes of evidence annexed to the present Application. There are two important witnesses, namely, PW-1 Vishnu Bhosale and PW-11 Amol Toraskar, who had deposed that they had seen the Applicant inside her flat where the dead body of the deceased was lying.

9. There was another important witness PW-2 Lankesh Gaikwad who was the Watchman of the society who had actually seen the Applicant dragging the deceased inside her flat. However, learned counsel for the Applicant submitted that after recording of his examination-in-chief, he passed away and,

therefore, his cross-examination could not be conducted. Shri Gavand, learned APP submitted that PW-2 Lankesh Gaikwad was available for cross-examination, but, learned counsel for the accused did not conduct his cross-examination and thereafter he had died.

10. There are two other witnesses, who claimed to have seen the Applicant inside the flat at the time of incident. But their cross-examination shows that their deposition to that extent was in the form of omission because they had not stated so in their police statements. In any case, there are at least two witnesses who have stated that the Applicant was inside the flat when the incident had taken place. There is no explanation coming forth from the Applicant.

11. In this background, on the previous occasion, bail was not granted to the Applicant and her application for bail was allowed to be withdrawn. That order was passed on 18.11.2019. Thereafter, the Appeal is not yet heard and the Applicant has completed more than nine years in the prison. The Applicant is a lady. The case rests on circumstantial

evidence. There is also a possibility that ultimately the Applicant may succeed in proving that it may not be a case under Section 302 of IPC, but, it could be a lesser offence.

12. Taking into account all these aspects, the Applicant can be released on bail during pendency of her Appeal. Hence, the following order is passed :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.876/2019, the Applicant is directed to be released on bail on her executing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

(M.S. KARNIK, J.)

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