

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

BAIL APPLICATION NO. 3865 OF 2023

Azmatunnisa Allauddin Ansari ... Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Omkar Chitale, for Applicant.

Mrs. G. P. Mulekar, APP for State.

M. Shirsat, PI, Shahunagar Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 8th JANUARY, 2024

PC:-

- 1) Heard the learned Counsel for the applicant and the learned APP for the State.
- 2) The applicant, who has been arraigned in CR No. 139 of 2023 registered with Shahunagar police station, Mumbai for the offences punishable under Sections 302, 364 and 201 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

3) Kismatali Ansari, the first informant, is the brother of accused No. 1 – Rehamatali. Accused No. 1 had a two-year-old son. On 18th April, 2023, accused No. 1 Rehamatali took his son and his nephew to fetch them chocolates. The sons of the first informant returned home. The son of the accused went missing. Initially, a missing complaint was lodged. Suspicion was entertained against accused No. 1- Rehamatali on account of the statements made by the accused No. 1 before few of his friends. On 19th April, 2023, the body of the boy was found in a gunny bag. Accused No. 1 came to be apprehended.

4) In the disclosure statement, accused No. 1 – Rehamatali stated that at the instigation of the applicant, with whom he had been in a relationship out of marriage, since three years, he had killed his son. The applicant came to be arrested on 20th April, 2023.

5) The learned Counsel for the applicant submitted that the applicant had been falsely roped in on the basis of the alleged disclosure statement made by Rehamatali. There is no other material to establish the nexus between the applicant and the crime. It was submitted that the applicant is a 21-year-old young lady. The applicant, therefore, deserves to be released on bail.

6) The learned APP resisted the prayer for bail. It was submitted that the accused No. 1- Rehamat, the father of the deceased, had clearly stated that at the instigation of the applicant, he had killed the boy. There was clear abetment for the commission of the offence of murder by the applicant. Therefore, the applicant does not deserve the relief of bail.

7) I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Prima facie, the only material against the applicant is the disclosure statement made by the accused- Reshamatali, who was allegedly in a relationship outside the marriage with the applicant. It is trite, a disclosure statement of the co-accused does not constitute substantive evidence. In any case, the said statement does not distinctly relate to the fact thereby discovered. Therefore, the submissions on behalf of the applicant that the statement of co-accused – Rehamatali does not deserve to be taken into account, even at this stage, carries some substance.

8) Investigation is complete and charge-sheet has been lodged. The applicant has been in custody since 20th April, 2023. The applicant is a young lady. The applicant has roots in

society. Possibility of fleeing away from justice seems to be remote.

9) I am, therefore, inclined to exercise the discretion in favour of the applicant.

10) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Azmatunnisa Allauddin Ansari be released on bail in CR No. 139 of 2023 registered with Shahunagar police station, Mumbai for the offences punishable under Sections 302, 364 and 201 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.

(iii) The applicant shall mark his presence at the concerned Police Station on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]