

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1599 OF 2024**

Manisha Prashant Achare	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Zoheb Shaikh, for Applicant.
Mrs. Mahalaxmi Ganapathy, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 22 AUGUST 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in C.R.No.297 of 2021 registered with V.B.Nagar Police Station for the offences punishable under Sections 364, 302, 201, 202, 212 read with Section 34 of the Indian Penal Code, has preferred this application to enlarge her on bail.
3. Sangeeta Jagannath Sangale, first informant, is the sister of Deepak @ Kotya J. Sangle, the deceased. The first informant had initially lodged a report with the allegations that she had a strong suspicion that Saraswati, wife of the deceased, Manisha - the applicant, who is the sister in law of the deceased, Anand, brother

in law and Vishal Karade and others, who were residing in the vicinity, had abducted the deceased.

4. During the course of investigation, it transpired that Kotya, the deceased, was a habitual offender. He used to lodge false reports against other persons. The deceased was allegedly sexually exploiting Manisha, the applicant herein. The deceased had threatened to sexually exploit the then 9 year old daughter of the applicant and implicate co-accused Vishal Karade, Kishor Sahu and Hritik Vishwakarma for the said act. Therefore, the applicant and the co-accused entered into a criminal conspiracy to eliminate the deceased. The applicant had allegedly administered the deceased sleeping pills, by mixing the pills in the tea. Co-accused Vishal, Kishor, Hritik and Anand had caught hold of the deceased while he was asleep and the brother of the applicant who was then a child in conflict with law, gave blows by means of knife. The applicant, abovenamed co-accused and other accused also caused disappearance of the evidence by burying the deadbody of the deceased Kotya in a nearby shanty.

5. Learned Counsel for the Applicant submitted that the

prosecution case is replete with infirmities. The statements of the witnesses on which the prosecution banks upon, indicate that the role of administering sleeping pills attributed to the applicant cannot be said to have been prima facie made out. The prosecution heavily banks upon the statement of Priyanshu Nair, the alleged eye witness. However, the said witness cannot be said to be a witness to the occurrence. At best, Mr. Nair can be said to be a witness to the incidents, post the alleged assault. Therefore, even if the prosecution case is taken at par, the applicant can, at best, be arraigned for the offence punishable under Section 201 of the Penal Code. Co-accused Vishal, Anand and Hritik to whom the role of actual assault has been attributed, have already been enlarged on bail. The applicant has been in custody since 19 August 2021. Therefore, the applicant deserves to be enlarged on bail.

6. Learned APP resisted the prayer for bail. It was urged that though the prosecution case rests on circumstantial evidence, yet a very strong circumstance of last seen has been made out qua the applicant. In addition, the applicant had a strong motive to eliminate the deceased. Learned APP invited attention of the

Court to the statement of Priyanshu Nair which, according to the learned APP, squarely incriminates the applicant as the person who was keeping the watch in front of the house of the deceased. After a while, co-accused were seen carrying the body of the deceased and shifting the same to another room. Reliance was also placed on the disclosure statement of the co-accused in which the applicant has been named.

7. I have perused the material on record and given anxious consideration to the submissions canvassed across the bar. First and foremost, it is necessary to note that Vishal Karade, to whom the role of having stabbed the deceased along with the co-accused is attributed, has been released on bail. Based on the aforesaid order, the learned Sessions Judge has released co-accused Anand Gautam and Hritik Vishwakarma on bail. Thus, I find substance in the submission of Mr. Shaikh that the co-accused with more grave allegations have been enlarged on bail.

8. Prima facie, the role of having administering the sleeping pills to the deceased, attributed to the applicant, rests on the statements of two witnesses -Mangal R. Gupta and Dr. Bhagwandas

T. Iyadasani. Prima facie, there is a material discrepancy as to the number of the sleeping pills which the applicant allegedly procured. To add to this, CA report indicates that the general and specific medical test did not reveal any poison in viscera (Exhibits 1 and 2) sent for analysis. Whether the deceased was administered any poison or stupefying substance, thus, enters in the arena of uncertainty.

9. On the aspect of motive, primarily the prosecution relies upon the disclosure statement allegedly made by the co-accused. It is well recognized that the disclosure statement made by one accused is not legal evidence against the non-maker co-accused. Since the prosecution case rests on the circumstantial evidence primarily, the prosecution will have to satisfy the classical requirements of sustaining the guilt on the basis circumstantial evidence. That would a matter for adjudication at the trial.

10. As the co-accused to whom the role of actual assault is attributed, have been released on bail, the applicant who is alleged to be an accessory before and after the fact is entitled to the same dispensation.

11. The applicant has been in custody since 19 August 2021. Having regard to the large pendency of cases and the number of accused involved in this case and the number of witnesses which the prosecution may be required to examine at the trial, it is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise discretion in favour of the applicant.

12. Hence, the following Order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Manisha Prashant Achare be released on bail in C.R.No.297 of 2021 registered with V.B.Nagar Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark her presence before V.B.Nagar Police Station on first Monday of every alternate month between 11 am to 1 pm for a period of three years or till the conclusion of the trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the 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.

Application disposed.

(N.J.JAMADAR, J.)