

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2184 OF 2024

Priya Suhas Nikam ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Shriganesh Sawalkar, for the Applicant.

Mr. A.A. Naik, APP, for the Respondent/State.

Mr. Navnath Pandhare, PSI, Narpoli police station.

CORAM : N. J. JAMADAR, J.

DATE : AUGUST 21, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No. 500 of 2021 registered with Narpoli police station for the offences punishable under sections 302, 120-B, 201, 182(A) and 114 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. Prabhakar Ganji (the deceased) was the husband of the Shruti Ganji (A/1). There was marital discord between Shruti (A/1) and the deceased. Shruti Ganji (A/1) desired to obtain a divorce from the deceased but the latter was not willing to put an end to their marital bond. Shruti Ganji (A/1) was allegedly in a relationship outside marriage with Nitesh Wala - A3. Shruti Ganji (A/1) was a friend of the applicant (A/2). Shruti Ganji (A/1), Nitesh - A3 and the applicant (A/2) hatched a conspiracy to kill the

deceased by employing a contract killer. The accused no. 4 and two absconding accused were hired for the said purpose. There were meetings between accused nos. 1 to 4 and the absconding accused, at Bhalchandra Snacks Corner. Shruti Ganji (A/1) had allegedly pledged her gold ornaments with Sinduri Jewellers and obtained a sum of Rs. 1,00,000/- to pay the same to accused no. 4 and absconding accused.

4. On 31st July, 2021, the accused no. 4 and the absconding accused hired the car of the deceased on the pretext that they were to travel to Mumbai. On the pretext that the accused no. 4 and the absconding accused were to take a break for eating Chinese food, they asked the deceased to halt the car and one of the absconding accused strangled the deceased with nylon rope while accused no. 4 and another absconding accused caught hold of the deceased.

5. At the outset, the learned counsel for the applicant submitted that Shruti Ganji (A/1) the principal accused has been enlarged on bail by this Court by an order dated 2nd May, 2024. The role attributed to the applicant is, by and large, identical to that of the Shruti Ganji. In fact, Shruti Ganji (A/1) had a motive. The applicant has been roped in for being a friend of Shruti Ganji (A/1).

6. While releasing the co-accused Shruti Ganji (A/1) on bail, this Court has observed, inter alia, as under:-

8] I have carefully considered the report under Section 173 of the Code of Criminal Procedure, 1973 the documents annexed with it and the submissions canvassed across the bar. Evidently, the case rests on circumstantial evidence. The circumstances arrayed against the applicant are the pledging of the gold ornaments, taking part in the meetings wherein the conspiracy was allegedly hatched and sharing the photograph of the deceased.

9] The first two circumstances, prima facie, appear to the contentious as the jeweller Hiralal had not known the applicant. It does not appear that TI parade was held to establish the identity of the applicant as one of the persons, who had accompanied accused no. 2 – Priya, whom the said witness had known from before.

10] The statement of the Ashish Chauhan is also required to be appreciated in the light of the fact that a number of customers would visit the hotel, on a given day, and no test identification parade was held to establish the identify of the applicant as one of those persons, who had visited the said hotel on the day the conspiracy was allegedly hatched.

11] That leaves, the circumstance of retrieval of the photograph of the deceased from the mobile phone handset of accused no. 4 which was allegedly forwarded by the applicant.

12] It is trite, in a case based on circumstantial evidence the circumstances should be of a conclusive tendency and lead to no other inference than that of the guilt of the accused. The third circumstance arrayed against the applicant is prima facie compatible with the innocence of the applicant.

13] Evidently there was marital discord between the applicant and the deceased. However, on that count alone, an inference of complicity in the alleged offences cannot be drawn. In any event, whether the circumstances arrayed against the applicant sustain her guilt, would be a matter for adjudication at the trial.

14] The applicant has been in custody since 1st August 2021. The Court is informed that charge has not yet been framed. 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.

7. The learned APP fairly submitted that the principle of parity

may apply.

8. Evidently, the prosecution case rests on circumstantial evidence. The circumstances pressed into service against the applicant are, by and large, the same which were arrayed against Shruti Ganji (A/1).

9. The applicant has been roped in as a confederate in the conspiracy. The reasons which weighed with this Court in releasing Shruti Ganji (A/1), extracted above, apply with equal force to the claim of the applicant for bail. The applicant is in custody since 3rd August, 2021. The Court is informed that charge has yet not been framed. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period. The applicant appears to have roots in society.

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

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant be released on bail in C.R. No. 500 of 2021 registered with Narpoli police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark her presence at Narpoli police station on the first Monday of every alternate month between 11 am to 1 pm till conclusion of the trial.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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.)