

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

BAIL APPLICATION NO. 4006 OF 2024

Kalyanidevi Divesh Sharma	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Shriganesh S. Sawalkar for the Applicant.
Mr. Tanveer G. Khan, APP for Respondent-State.
Mr. Vijay S. Dakhore, PSI, Wada Police Station, Dist. Palghar.

**CORAM: MANISH PITALE, J.
DATE : 11th NOVEMBER 2024**

P.C. :

1. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is seeking bail as she was arrested on 27th March 2021 in connection with FIR No. 0093 of 2021 dated 26th March 2021 registered at Wada Police Station, Dist. Thane, for offences under Sections 302 and 201 read with 34 of the Indian Penal Code, 1860 (IPC).

3. In brief, the prosecution case appears to be that the applicant in connivance with the other two co-accused persons caused the death of the husband of the applicant. The allegation is that the applicant was having an affair with accused No.1-Pintukumar Singh, who was the cousin of the deceased and in that backdrop,

the accused persons with common intention caused the death of the victim by strangulation with a *gamcha* (towel).

4. The learned counsel for the applicant has referred to the documents filed along with the application and he submits that there is no material to link the applicant with the incident in question and therefore, this Court may consider granting bail, particularly because the applicant is a woman and she has already suffered incarceration for a period of 3 years and 8 months.

5. On the other hand, the learned APP submits that there is enough material to demonstrate involvement of the applicant in the murder of her own husband. It is submitted that in the light of the material available on record, this Court may not show any indulgence to the applicant.

6. Having heard the rival submissions in the backdrop of the material available on record, this Court is inclined to allow the present application, for the following reasons :

- (a) The applicant has not been specifically named in the FIR. A perusal of the statement of the informant, leading to registration of the FIR and even his supplementary statement, does not indicate that the applicant was named as a person involved in the murder of the deceased.
- (b) The supplementary statement of the informant for the first time refers to alleged affair between the applicant and the

accused No.1, who happens to be the cousin of the deceased. But, the same falls in the category of hearsay material.

- (c) The statements of witnesses recorded during the course of investigation, *prima facie* appear to fall short of showing the involvement of the applicant in causing the death of the victim, who was her husband.
- (d) The recovery of the *gamcha* (towel) allegedly used in causing the death of the victim, was at the behest of the accused No.1. There is *prima facie* absence of material to show any link between the applicant and the death of her husband.
- (e) The FIR was triggered on the basis of the statement of the informant, who appeared to have pursued the accused No.1, when he was running away in suspicious circumstances with a gunny bag. The body of the victim was found in the said bag, which led to registration of the FIR. There is nothing to indicate as to how the role of the applicant can be specifically claimed by the Investigating Authority in the absence of material to link her with the death of her husband.
- (f) Reliance placed on memorandum of the applicant recorded under Section 27 of the Indian Evidence Act, 1872, would

not take the case of the prosecution any further, for the reason that the incriminating statements made therein can be of no consequence. *Prima facie* there appears to be lack of independent material to link the applicant with the murder of the victim.

- (g) The applicant is a woman. She has suffered incarceration for about 3 years and 8 months. Even charge is not framed and the charge-sheet shows that the prosecution intends to examine as many as 33 witnesses.
- (h) In view of the above reasons, this Court is inclined to allow the application, subject to specific conditions being imposed upon the applicant.

7. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. 0093 of 2021 dated 26th March 2021 registered at Wada Police Station, Dist. Thane, on furnishing P.R. Bond of Rs.25,000/- and one or two sureties in the like amount.
- (b) The applicant shall cooperate with the trial Court for expeditious trial and he shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.

- (c) The applicant shall not tamper with the evidence of the prosecution and he shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of his Contact Number and residential address with updates in case of any change.

8. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

9. The application is disposed of.

MANISH PITALE, J.