

Ajay

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

CRIMINAL BAIL APPLICATION NO.3248 OF 2024

Jaya Dhanji Makwana	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Vishal V. Rankhambe a/w. Ms. Aparna V. Rankhambe, Mr. Chaitanya M. Bagul and Mr. Afsar Ansari, Advocates for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent – State.
 - Ms. Amruta Patil, PSI – RCF Police Station present.
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CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 03, 2025.

P.C.:

- 1.** Heard Mr. Rankhambe, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State.
- 2.** This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.333 of 2024 registered with RCF Police Station for offence under Section 304 of the Indian Penal Code, 1860. Applicant has been arrested on 25.05.2024.
- 3.** Briefly stated, First Informant - Usha Arjun Lakhum who is the sister of deceased victim Dhanji Keshav Makwana has stated in the FIR that deceased victim and Applicant got married in the year 2007 and that quarrelsome nature of Applicant led the deceased victim to

alcoholism. She has alleged that Applicant used to pick fights / quarrels with deceased victim over petty issues. She has stated that on 24.05.2024 she received a phone call from her cousin brother Suresh Makwana who informed her about the demise of the victim. Thereafter when she inquired with the neighbours, she was informed that the Applicant and deceased victim were quarreling on the previous night and when the post-mortem report was received she was informed that victim's ribs on both sides were fractured due to assault on his abdomen which resulted into his death. Hence she lodged the FIR against present Applicant alleging that she severely assaulted the victim which led to his demise.

4. Mr. Rankhambe, learned Advocate for Applicant would submit that Applicant is incarcerated since 8 months and 10 days. He would submit that Applicant has been falsely implicated in the crime and there is no direct or primary evidence or eye-witness to any incident for her indictment in the present crime. He would submit that it is an admitted fact that deceased victim was an alcoholic and the same ultimately led to dysfunction of his liver and kidneys and that is the cause of his death. He would submit that Applicant did not commit any assault on the deceased-victim rather he had a fall on the previous night owing to his inebriated state as he lost his balance while standing on a stool. He has drawn my attention to the statement of the son of Applicant and deceased victim which is a part of the charge-sheet and

would contend that the same corroborates with the statement of Applicant which makes it clear that the fracture in his ribs was due to his fall from the stool.

4.1. He would submit that Applicant is working as a house-help and has two children to whom she is required to provide care and support. He would submit that owing to the present incident Applicant's son is kept in the Court of Juvenile/ Child Reform Home at Dongri, Mumbai and daughter is kept in a Rehabilitation Centre.

4.2. He would submit that investigation in the matter is complete and charge-sheet has been filed and considering the evidence on record there no cogent evidence against the Applicant. He has referred to and relied upon the decision of the Supreme Court in the case of *Gurbaksh Singh Sibba Vs. State of Punjab*¹ and would urge this Court to consider and maintain a fine balance between societal interest *vis-a-vis* personal liberty while adhering to the golden principle of criminal jurisprudence that the accused is presumed to be innocent till found guilty. In view of his above submissions, he would urge the Court to enlarge the Applicant on bail on terms and conditions as deemed fit by the Court.

5. Ms. Yadav, learned APP for Respondent – State would submit that the Applicant has committed a serious crime against her

¹ (1980) 2 SCC 565

own husband. She has drawn my attention to the post-mortem report at page No.62 of the Application wherein it is mentioned that there is fracture of right side ribs in 2nd to 11th rib as also fracture of left side ribs in 4th to 6th rib in order to show that death of victim occurred due to assault by Applicant. She would submit that considering that there is sufficient corroborative material on record against the Applicant, the Bail Application be rejected.

6. With the able assistance of the learned Advocates I have perused the record of the case. From the record, it is *prima facie* clear that deceased victim was an alcoholic and the same is corroborated by the statements of his neighbours which are recorded by the prosecution. One such statement is of one neighbour called Mehul Gohil which is appended at page No.60 of the Application wherein he states that deceased was an alcoholic and was always found in an inebriated state due to which there were frequent quarrels between Applicant and deceased. He has stated that even on 23.05.2024 in the evening deceased came home under the influence of alcohol which led to a quarrel with Applicant at around 12:30 am to 1:00 am in the night. Thereafter the said witness has stated that on 24.05.2024 at 6:30 am Applicant knocked the door of his house and informed him that deceased was in an unconscious state and he told her to dial 100 number on phone and call the police after which the police came to the spot and took the deceased victim to nearby Rajawadi Hospital and the

Applicant and her son were taken to the police station.

7. Next, perusal of the statement of the son of Applicant and deceased dated 24.05.2024 also corroborates with the fact that on the intervening night there was a quarrel between the Applicant and deceased as he was in an inebriated state and tried to climb on a stool twice but fell down as he lost his balance. Hence it can be construed that the fracture of ribs as shown in the post-mortem report was owing to the fall of deceased from the stool. The post-mortem report further reveals that the right lobe of liver of Applicant was crushed and infiltrated with blood and the left side was lacerated as also his gall bladder was lacerated. Considering the above, there is no direct evidence or sufficient material for further incarceration of Applicant in prison due to the son's own statement about the fall suffered by the deceased and hence her further incarceration is unwarranted.

8. It is a settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether she would influence the witnesses and tamper with the evidence, her antecedents are required to be considered in such cases. Applicant's two children are living a life in penury in Children Home /

Rehabilitation Centre and this is a strong mitigating factor for me to consider in the present case. Considering the overall facts and circumstances in the present case, Applicant has made out a case for enlargement on bail. Hence the following order:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Sunday between 10:00 a.m. to 12:00 p.m. for the first three months and thereafter as and when called;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if she does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (v) Applicant shall keep the Investigating Officer informed of her current address and mobile contact number and / or change of residence or mobile details, if any, from

time to time;

(vi) Any infraction of the above conditions shall entail the prosecution to seek cancellation of this order.

9. The aforesaid observations are *prima facie* on the basis of record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

10. Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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by AJAY
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