

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 898 OF 2025
IN
CRIMINAL APPEAL NO. 220 OF 2025**

Nandabai Dilip Kadam,
Adult Indian Inhabitant,
Aged about 41 years,
Occupation: Housewife,
having address at House No. 814/11,
Mali Galli, Wadalagaon, Nashik,
currently lodged in Jail

...Applicant/Appellant

~ versus ~

1. **The State of Maharashtra**
2. **The Inspector of Police,**
Indira Nagar Police Station, Nashik

...Respondents

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APPEARANCES

For the Applicant/Appellant Mr Ujjwal Gandhi.

For the Respondent-State Ms Pallavi N. Dabholkar, APP

**CORAM : SUMAN SHYAM &
SHYAM C. CHANDAK, JJ**

**RESERVED ON : 28TH JULY 2025.
PRONOUNCED ON : 31ST JULY 2025.**

ORDER (Per Suman Shyam, J):-

1. Heard Mr Ujjwal Gandhi, learned legal aid counsel appearing for the Applicant/Appellant. Also heard Ms Pallavi N Dabholkar, learned APP appearing for the Respondent-State.

2. Based on the FIR dated 24/09/2022 lodged by the son of the deceased i.e. Roshan Dilip Kadam(PW-1) C.R. No. 155 of 2022 was registered with the Indira Nagar Police Station under Sections 302 and 201 of the Indian Penal Code (“IPC”) against the sole Applicant for committing the murder of her husband Dilip Rangnath Kadam. Upon completion of investigation Charge-Sheet was submitted by the Police. Thereafter, charge was framed against the Applicant under sections 302 and 201 of the IPC and she was made to face trial. On completion of trial, by the Judgment and Order dated 3rd December 2024 passed by the learned Sessions Judge, Nashik in Sessions Case No. 6 of 2023, the Applicant was convicted under Sections 302 and 201 of the IPC. She was sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs. 5,000/- with default stipulation for committing offence punishable under section 302 IPC. For committing the offence punishable under Section 201 of the IPC, the Applicant was sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs. 1,000/- i/d to suffer simple imprisonment for one month. Being aggrieved by the Judgment and Order dated 3rd December 2024 passed in Sessions Case No. 6 of 2023, the Applicant as Appellant has preferred Criminal Appeal No. 220 of 2025, which is pending disposal before this Court.

3. The Applicant was arrested on 26/09/2022 and since then, she is in confinement. The instant Application has been filed under Section 430 of Bhartiya Nagrik Suraksha Sanhita, 2023

(“BNSS”) with a prayer to suspend the jail sentence of the Applicant and also to release her on bail.

4. The case of the prosecution, in a nutshell, is that after the demise of his first wife, the deceased Dilip Ranganath Kadam entered into a second marriage with the Applicant. Both of them were living as husband and wife in the house situated at Mali-lane, Wadala, Nashik. The deceased did not have any issue born out of his marriage with the Applicant. The son (PW-1) Roshan and daughter (PW-10) Ashwini born to the deceased through his first wife lived in a separate house with their aunt (PW-14) Mandabai. Frequent quarrels used to take place between the Applicant and the deceased as a result of which the former started to live with her parents at Yeola. However, just 2/3 days before the incident deceased Dilip got his wife back to his house. It is alleged that being fed-up with the ill-treatment meted out to the Applicant by her husband, she had committed the murder of Dilip by inflicting multiple lacerated, stab and incised injuries with the help of knife and wooden plank and thereafter, tried to conceal the dead body under the cot. The hands of the deceased were found to have been tied in the back.

5. The prosecution case is based on circumstantial evidence. The learned Sessions Judge has also heavily relied upon the last seen together circumstance to arrive at a conclusion that the charge brought against the Accused/Applicant has been established on the basis of circumstantial evidence. The learned

trial court was also of the view that since the Applicant and the deceased were residing in the same house, hence, in view of section 106 of the Indian Evidence Act, failure on the part of the Applicant to offer plausible explanation as to the circumstances under which the deceased had suffered injuries would be an additional link in the chain of circumstances establishing the guilt of the Applicant.

6. By referring to the evidence brought on record, Mr Gandhi, learned legal aid counsel appearing for the Applicant, has argued that evidence brought on record by the prosecution is wholly insufficient to sustain the conviction of the Applicant. According to Mr. Gandhi, the last seen together circumstance has not been properly established in this case and there is no other evidence to establish the murder charge brought against the Applicant. Contending that the prosecution has failed to prove the motive behind the crime, Mr. Gandhi has further argued that the learned Trial Court has convicted the Applicant merely on conjectures and surmisals and by relying upon testimony of witnesses who were tutored by the police and hence, wholly untrustworthy. It is also the submission of Mr Gandhi that even the recovery of gown of the applicant allegedly on being led by the accused has not been proved in accordance with law. That apart, the failure on the part of the Investigating Officer to inquire into the circumstances under which two Aadhar cards of unidentified persons were found near the dead body would constitute a serious lacunae in the prosecution case. On such grounds, Mr Gandhi has urged that the

present is a fit case for acquittal of the Applicant. Therefore, the bail prayer made in the present application be granted by this court.

7. Contesting the above submissions, Ms Dabholkar, learned APP, has argued that considering the evidence of PW-1 and PW-10 as well as the medical evidence available on record, it is clear that that the deceased had suffered a homicidal death inside his house caused by none other than the Applicant. She further submits that the deceased was last seen in the company of the Applicant hours before the incident and the last seen together circumstance has also been established by PW-1. It has also been proved that the Applicant and the deceased Dilip lived together under one roof. Under these circumstances, the failure on the part to Accused/Applicant to offer any plausible explanation as to the circumstances leading to death of the deceased would undoubtedly lead to the presumption of guilt against the accused.

8. From the evidence available on record, it appears that the deceased Dilip used to live separately with the accused and the PW-1 and PW-10 lived with their aunt Mandabai, who was examined as PW-14. From the evidence of PW-1, it is established that the deceased was last seen together with the Accused on 22nd September 2022 at around 7.30 pm. The dead-body of the deceased was, however, recovered after 7.30 pm on 24th September 2022. Therefore, it is evident that there was

considerable gap between the time on which the deceased was last seen together with the Accused and the recovery of the dead-body.

9. It has further come out from the evidence of PW-10 and PW-14 that on 23rd September 2022, the Applicant had stayed in the house of PW-14. She left the house only on the next morning, i.e. on 24th September 2022 at around 6.00 am and went to her parents place at Yeola. On 26th September 2022, the Applicant was brought from her parents' house and arrested by the Investigating officer. The house of the deceased was found to be locked from the outside and the dead-body was recovered on 24/09/2022 after breaking the lock open.

10. It is no doubt correct that the homicidal death of the deceased has been duly established from the medical evidence brought on record. However, from a preliminary assessment of the evidence brought on record it *prima facie* appears that there is no conclusive evidence to establish the fact that the Applicant had resided in the same house with the deceased on the day of the incident. The seized muddemal also could not be conclusively connected with the accused. The claim of the prosecution of having seized the wearing gown of the accused on discovery, on being led by the accused, also does not appear to have been proved in accordance with law. Moreover, there is no explanation by the prosecution as regards the presence of two Aadhar cards near the dead body. From the manner in which the dead body was found, it looks highly improbable that the accused, being a

women, could all by herself, manage to overpower the deceased and inflict such injuries on him without there being any signs of resistance by the deceased. The prosecution has also failed to establish the motive behind the crime. Under such circumstances, we find force in the submission of the learned legal aid counsel that there is considerable doubt as to whether the prosecution has succeeded in proving the charge brought against the accused beyond reasonable doubt by circumstantial evidence.

11. It is correct that in her statement recorded under Section 313 of the Cr.P.C the accused has failed to offer any explanation as to the circumstances under which the deceased has suffered death. However, what is also borne in mind is that section 106 of the Evidence Act would not relieve the prosecution of prima facie establishing the charge brought against the accused. In the case of *Trimukh Maroti Kirkan vs State of Maharashtra*,¹ the Hon'ble Supreme Court has observed that when crime is committed in the secrecy of house, the inmates would have a burdened under Section 106 of the Evidence to offer explanation as to the circumstance under which the incident took place. However, it was also observed that the mandate of Section 106 of the Evidence Act would not relieve the prosecution of its burden to establish the charge although it might lessen the burden of the prosecution.

1 2006 (10) SCC 681.

12. Law is well settled that last seen together circumstance is a weak piece of evidence and cannot be the sole basis of conviction. Moreover, in the present case, there is a considerable time gap between the time when the accused was last seen in the company of the deceased and the recovery of the dead body. It is no doubt correct that the conduct of the accused raises a strong suspicion as regards her involvement in committing the crime. However, suspicion, how so ever strong, cannot take the place of proof. From a review of the evidence on record, we are of the opinion that there is some doubt as to whether the prosecution has been able to prove the charge brought against the Applicant beyond reasonable doubt. However, whether the charge brought against the Applicant has been established beyond reasonable doubt can be ascertained only after a full length hearing which is unlikely in the near future.

13. Considering the peculiar facts and circumstances of the present case, we are of the considered opinion that the Applicant has made out a good case for suspension of sentence and for her release on bail. As such, we pass the following order -:

ORDER

- (a) The Applicant, Nandabai Dilip Kadam shall be forthwith released on bail in connection with C.R. No. 155 of 2022, registered with the Indira Nagar Police Station, Nashik on her executing P .R. bond of a sum

of Rs. 30,000/- with one or two sureties in like amount to the satisfaction of the learned Trial Court, subject to fulfillment of the following further conditions:

- (i) The Applicant shall maintain good behaviour and shall not indulge in any anti social activity while on bail.
- (ii) The Applicant shall keep the surety alive for the purpose of this bail.
- (iii) The Applicant shall appear before the concerned Police Station on the first Saturday of every month between 1:00 p.m. to 4:00 p.m. and shall not leave the area of Nashik District without prior permission of the learned Trial Court.
- (iv) The Applicant shall not threaten or interfere in any manner with the complainant or any of other witness connected with this case.

14. It is made clear that violation of the above conditions shall be viewed seriously.

15. The observations made herein-above are *prima-facie* in nature and have been made for the limited purpose of disposing of the bail application.

16. The Interim Application is allowed in the aforesaid terms.

17. The Registry is directed to forthwith communicate this order to the concerned Jail Authorities at Nashik.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)