

MHPA010012172023



ORDER BELOW EXH. 33 IN SESSIONS CASE NO.86/2023

The State Vs. Kaveribai W/o. Gajanan Bandgar and others.

{Passed on 09th November, 2023}

Applicant-accused No.1 Kaveribai W/o. Gajanan Bandgar filed this application for regular bail under Section 439 of Cr.P.C. in Crime No.05/2023 registered at police station Tadkalas, tq. Purna, Dist. Parbhani for the offence punishable under section 302, 363, 364, 201, 120(b) read with Section 34 of the Indian Penal Code.

02. Perused application and say. Heard Learned Advocate Mr.M.E.Bhosle appearing for the applicant-accused and Learned Additional Public Prosecutor Mr. B.B.Ghate for the State.

03. In brief, it is contention of the Learned Advocate appearing for the applicant-accused that she has not committed any offence. She is ready to abide all the conditions if any, imposed by this Court. Therefore, she be released on bail.

04. Per contra, it is contention of the Learned Additional Public Prosecutor that offence is serious. Applicant-accused is involved in the commission of offence. If she is released on bail she may hamper and tamper the prosecution witnesses. Therefore application be rejected.

05. The Learned Advocate appearing for the applicant-accused No.1 submitted that the date of incident is 12.01.2023. FIR is lodged on 13.01.2023. FIR is in respect of missing of deceased. Applicant-accused No.1 is arrested on 17.01.2023. Charge-sheet is filed on 03.04.2023.

06. The Learned Advocate appearing for the applicant-accused No.1 further submitted that more than one year is over muddemal is not produced. He also states prosecution is not in position to state when muddemal can be produced before the Court. There is no progress in trial. Therefore as per Section 437 of the Code of Criminal Procedure applicant-accused No.1 is being lady be released on bail.

07. Learned Advocate appearing for the applicant-accused No.1 submitted that the spot panchnama is dated 13.01.2023. The said house is of accused No.3. It is mentioned in the spot panchnama that entire house is seen but nothing found. As per the FIR Vedika and deceased were with informant till 5.30 p.m. Vedika is the best witness. Therefore there is no question of alleged crime.

08. Learned Advocate appearing for the applicant-accused No.1 submitted that it is mentioned in the spot panchnama that spot of incident is open place. Per contra, Learned APP submitted that the open place which is shown in the spot panchnama is place where deceased was eating biscuits with her sister.

09. Learned Advocate appearing for the applicant-accused No.1 submitted that at the relevant time news published in different

news papers that deceased was missing. There was tremendous pressure on police machinery to find out deceased. Dog squad was also visited the spot of incident. Forensic team was also visited spot of incident. Inspite of the same nothing found and lastly prosecution reduced in writing false statement of Mahananda and thereby implicated applicant-accused in false case.

10. Learned Advocate appearing for the accused further submitted that as per statement of witness Mahananda, she had been to the field of applicant-accused No.1 for doing work. It means she was having good relations with accused persons. Therefore there is no question of enmical terms between both the parties. The alleged story of grudge of applicant-accused No.1 against informant and his family members is false.

11. Learned Advocate appearing for the accused further submitted that if for a movement it is presumed applicant-accused had grudge that her husband died because of informant and family members of informant during digging the well than the said work of digging of well is prior to seven years and therefore baseless story is put-forth by the prosecution.

12. Learned Advocate appearing for the accused further submitted that in natural course deceased Govind would sit with her mother and would eat biscuits. Therefore case of the prosecution that deceased Govind was eating biscuits at the house of applicant-accused is false.

13. Learned Advocate appearing for the accused further submitted that as per statement of witness shopkeeper Datta the informant Ganesh was in the village till 04.00 p.m. As per the statement of Datta informant Ganesh was in his shop and deceased was also with the informant Ganesh till 04.00 p.m. Therefore, there is no question that deceased went to the house of applicant accused.

14. Learned Advocate appearing for the accused further submitted that the letter was issued to medical officer on 17.01.2023. The said letter was issued by the investigating officer to the medical officer before visiting the spot of incident. Therefore this conduct raised doubt about the happening of the incident.

15. Learned Advocate appearing for the accused further submitted that timing is not mentioned in any letter issued by the investigating officer. Timing is not mentioned on the papers of medical examination of the accused. Applicant-accused is arrested on 17.01.2023 as per station diary entry number 5 at 7.30 hours.

16. Learned Advocate appearing for the accused further submitted that there is no date on recovery panchnama. Time is changed on the recovery panchnama. According to the prosecution post-mortem is conducted on 17.01.2023. Investigating officer issued letters to the medical officer to provide post mortem notes. Nothing is on record that as to why medical officer did not provide post-mortem report to the police. Post-mortem notes are false. If really the post-mortem was properly carried out on 17.01.2023 than the medical officer would have issued the post-mortem report immediately. He also submitted that outward number 20/2023 and

dated 17.01.2023 is mentioned on the post-mortem notes. So there was no need to investigating officer to issue letter dated 23.02.2023 and 04.03.2023 to the medical officer to provide post-mortem report. All these circumstance shows that prosecution case is false. Therefore applicant-accused be released on bail. On the contrary the learned APP submitted the post mortem notes are given to the Investigating Officer immediately and therefore the Investigating Officer would also state as to why he wrote letters to the medical officer for post mortem notes.

17. Learned Advocate appearing for the accused further submitted that as per Para No. 12-C of post-mortem report it is mentioned therein that easily pilling of skin is all over body. Therefore, question arose as to how the dead body is identified that it was of Govind. He also submits mother and father of deceased Govind did not identify the dead body.

18. Learned Advocate appearing for the accused further submitted that it is alleged that there was chain on the body of deceased Govind. Informant did not mention in the report that whether any ear rings or chain or Karduda etc. on the body of deceased Govind. Therefore, question arose as to how chain, ear rings or Kardoda was on the body of deceased Govind. Therefore, doubt raises that as to how brother of informant Govind namely Munja Dhotre identified that the dead body was of Govind. He also submits statement of Munja Dhotre is not recorded by police machinery immediately. Statement of Munja Dhotre is recorded on 21.01.2023. There is a lot of gap in recording the statement of Munja Dhotre. Munja Dhotre did not mention in his statement that

he identified deceased Govind on the basis of chain, Kardoda etc. Entire case of prosecution is based on circumstantial evidence. Accused is in jail since more than 10 months. There is no question of hampering and tampering. Therefore accused be released on bail.

19. Learned Additional Public Prosecutor submitted that the deceased Govind and her sister Vedica were at the shop of Datta till 05.30 p.m. Spot of incident which is mentioned in the spot panchnama is shown open place because deceased Govind was eating biscuits there. Accused persons killed Govind by carrying out pre-planned. The offence is serious. If applicant-accused is released on bail she may hamper and tamper prosecution witnesses. She is involved in the commission of offence. Therefore application be rejected.

20. Perused FIR. FIR is lodged on 13.01.2023. It is alleged in the FIR that informant Ganesh Bhimrao Dhotre is resident of Sidheshwar Nagar, Tq. Purna, Dist. Parbhani. He resides there with his wife and their children. He has two daughters and a son. Name of his daughter is Radha of 7 years and name of second daughter is Vedika age 4 years. He has son namely Govind age 3 years. They do agricultural work and carry their livelihood. On 12.01.2023 he had been to his own field to work at about 08.30 a.m. His wife Mahananda also had been to the field of Balasaheb Nivrutti Bandgar for labour work at 10.30 a.m. Children went to the school. He returned to home at 01.00 p.m. for meal. At that time his children had come to the house. His wife Mahananda was taking meal. He, his wife and children took meal together. Thereafter he and his wife went to their respective work. Thereafter, Vedika and Govind went to

his wife Mahananda where she was working in the field. At about 05.30 p.m. his son Govind and his daughter Vedika returned to the home. Vedika and Govind ate biscuit and they took tea at the house of Balasaheb Nivrutti Bandgar and went towards house. After some time, Vedika went to him and told him that Govind did not return. Thereafter he immediately went to house. He searched Govind here and there and returned home. At about 06.00 hours Ranjana Bhojaji Dhotre sister-in-law mobiled him on his mobile number and informed everything and he immediately went to the house. He, Dashrath Devkate, Lobhaji Reshmaji Gabhale and his brother Eknath Dhotre all searched here and there in the village to Govind but his son Govind did not tress out. Therefore, he went to the police station and lodged report that some unknown persons kidnapped his son. Consequently, aforesaid crime is registered.

21. It is contention of the Public Prosecutor and investigating officer that during investigation, investigating officer recorded statement of witnesses. He prepared spot panchnama. Search of Govind was going on through other police stations. Public notice was issued in the news paper regarding missing of said Govind. Missing notice was affixed at public places. Missing of Govind is informed to all the beat Amaldars for search of Govind. Mobile number, CDR/SDR and tower locations of suspected persons collected. Search was carried out here and there. Search was also carried out at backside house of the suspected person's house situated at village Sidheshwar at Kalgaon. Search was also taken in the crop of sugarcane behind the house of the suspected person and nearby places, well Etc. Inquiry was carried out with applicant accused Kaveribai as a suspect.

22. It is further contention of the Public Prosecutor and investigating officer that during inquiry Kaveribai stated that her husband Gajanan Bandgar was injured and died prior to seven years at the time of doing digging work of well in the field of informant and his three brothers. Kaveribai and others had doubt that informant killed Gajanan, but they did not lodge report. She, her father-in-law Balaji Bandgar, her mother-in-law Annapurnabai were annoyed that a young man of their family is killed and they decided to take revenge at suitable time. Mahananda Ganesh Dhotre has two children namely daughter Vedika age 4 years and Govind age 3 years. The two children were small persons in the family. Therefore, it was decided to kill one out of two. She had brought the said two children near her, accused Balaji and applicant-accused by giving them biscuit packets. Applicant accused and her mother in law tried to kill one out of said two earlier but in vein. Inner cultivation in the field of sugar cane was going on. For the purpose of inner cultivation in the field Chhayabai Dhotre, Manahanda Dhotre and Shobhabai Dhotre used to come. Vedika and Govind also used to come with them. Therefore, it was decided to kill one out of two. Chhayabai Dhotre, Manahanda Dhotre and Shobhabai Dhotre were coming regularly. Children were also coming regularly. Therefore, on 11.01.2023, Kaveribai, her mother in law and accused Balaji decided to kill the said child on 12.01.2023. Accused Balaji told if he remains in the house then people will raise doubt and people will beat them. He also said if females are at home nobody will raise doubt therefore he decided to go on following day to Banegaon. As planned accused Balaji went to Banegaon 08.a.m. on 12.01.2023. Applicant accused and her mother in law were waiting for children. Chhayabai Dhotre, Manahanda Dhotre and Shobhabai Dhotre came as usual for internal

operation in the field. Applicant accused also joined them. At about 02.00 p.m. all went to their respective home for meal and returned at 03.00 p.m. for work. Applicant accused was knowing that when school is going on and the said children come in the afternoon. Mother in law of applicant accused sent her at house for bringing tea for her.

23. It is further contention of the Public Prosecutor and investigating officer that therefore, Kaveribai went to the house. Vedika and Govind were at the house. She prepared tea and filled in the box. She came in the said field at the place of work at Govind and Vedika. At the time of drinking tea, Govind was demanding biscuit packet to the applicant-accused and therefore applicant-accused gave Rs.20/- to Kaveribai to handover it to said children. Therefore, Kaveribai, Govind and Vedika went to the house. Kaveribai gave Rs.20/- to Vedika. She told Vedika to bring two biscuits packets and two Kurkure packets. Govind and Vedika were sitting in front of house in the courtyard. Vedika went to her house to bring water. Govind alone was with Kaveribai. Kaveribai felt that this is good opportunity therefore, she went backside the house at ship shed (Gotha). She called Govind. They went to the said ship shed (Gotha). Kaveribai saw here and there. Nobody was there. Therefore she immediately brought one rope and tied both hands of Govind and inserted cotton into the mouth of Govind. She tied Govind tightly. She lifted Govind. She carried Govind and she kept Govind in big box in the Devghar and went to the field to the said woman farmers. Vedika came to the field. She was saying to Mahanandabai that Govind is not appearing and where is Govind. At that time Kaveribai saw towards her mother-in-law. Mahanandabai

and Vedika went to the village in search of Govind. Kaveribai and her mother in law worked in the field. They told to Shobhabai and Chhayabai to go respective house. Shobhabai and Chhayabai went to their house. Kaveribai told her mother in law that she tied hands of Govind and inserted cotton into the mouth of Govind and kept Govind in the Devghar's house in one box. During late night, Kaveribai and her mother in law dug a pit with the help of sickle in the said Devghar and they opened the box where Govind was kept. They found that Govind was alive but unconscious. She took out Govind from the box and she held both the hands of Govind tightly. Mother in law of Applicant accused tied throat of Govind by rope. She kept tightening throat of Govind for some time. Govind died. Mother in law of Applicant accused took out ear rings of Govind. She also took out green colour shirt from the person of Govind. Mother in law of Applicant accused put said ear rings and said shirt in the pit and put soil on it and buried Govind in the said pit. She also put soil on Govind in the said pit. Two cement tiles (Farsha) kept on the said pit.

24. It appears from the statement of witnesses that deceased Govind was eating biscuits at the house of accused. Perused statement recorded under Section 27 of the Indian Evidence Act. The dead body is recovered from the house of accused Balaji. Applicant-accused is daughter-in-law of accused Balaji. Accused No.2 Annapurnabai is wife of accused Balaji and she is mother-in-law of applicant-accused Kaveribai. I am of opinion that grounds raised for bail of the applicant accused are not sufficient to release applicant accused on bail. Though accused Annapurna and accused Balaji released on bail by the Hon'ble High Court. But I am of the opinion

that allegations against accused No. 2 and 3 are not same which are against the applicant-accused No.1 Kaveribai. Applicant accused is involved in the commission of alleged offence, and therefore I am of the opinion that applicant-accused cannot be released on bail holding that muddemal property is not filed on record. Prosecution can be directed to file on record muddemal property as early as possible and to examine witnesses which are not concerned with muddemal property. Hence, application is liable to be rejected. Therefore, following order.

O r d e r.

1	Application Exh.33 filed for releasing accused No.1 Kaveribai W/o. Gajanan Bandgar on bail is hereby rejected.
2	Prosecution is directed to take every effort to produce the muddemal on record as early as possible.
3	The prosecution is directed to examine witnesses who are not concerned with the muddemal property.

Date:09.11.2023.

(S.G.Borlepwar)
Additional Sessions Judge-4
Parbhani.

Dictated on:09.11.2023.
Typed on:18.11.2023.
Draft gave for checking
on 27.11.2023.
Diwali holidays from
11.11.2023 to 19.11.2023.
Presiding officer was on
training at New Delhi from
20.11.2023 to 25.11.2023.
Checked on:04.12.2023.
Signed on:04.12.2023.

(S.G.Borlepwar)
Additional Sessions Judge-4
Parbhani.