

Order below Ex.6.
(State Vs. Pushpa Bharat Dhonge)

1] This is an application to grant regular bail in connection with Crime No.238/2021 dated 27.04.2021 for the offences punishable under Sections 302, 201, 120(B), 363, 364 of the Indian Penal Code, registered at Khed Police Station.

2] Perused the application and written reply Ex.8 of the prosecution. Heard the Ld. Counsels for both the parties.

3] As per the case of prosecution, accused Bharat was having suspicion on wife accused Pushpa to have extra marital relations with informant's son namely Mahesh. Therefore, accused Pushpa was beaten at the hands of accused Bharat. So also Mahesh was also beat by accused Bharat on account of illicit relations with wife Pushpa. Thereafter, Bharat alongwith wife Pushpa and family members migrated to his village Avhat.

4] On 03.04.2021 deceased Mahesh had been to AIM at 11.00 a.m. but did not return to the house. His mother i.e. informant Vandana tried to search Mahesh and also made phone call on his cell phone but it was switched off. Therefore, on 06.04.2021 missing complaint of Mahesh was filed. Thereafter, on 27.04.2021 she came to know from the person acquainted with Mahesh that, on 03.04.2021 they saw accused Bharat and three others on the motorcycle at Khed Bus Stand. She suspected that, accused Bharat might have done something with her son Mahesh because of illicit relations with his wife Pushpa. On the basis of informant's statement Crime No.238/2021 came to be registered u/s.363 and 364 of Indian

Penal Code.

5] During investigation, on 27.04.2021 Bharat was arrested. On the basis of his memorandum statement the place was discovered where the dead body of Mahesh was buried. During the interrogation with Bharat it revealed that, co-accused Bhagwan, Dinesh and applicant/accused Pushpa were also instrumentally in killing Mahesh and buried his dead body. Accordingly, they came to be arrested by adding the offence of murder.

6] Applicant Pushpa seeking the bail on the grounds mentioned in the application. Inter-alia contended that, she has no role in the commission of crime. There is no motive to cause death of deceased Mahesh by the applicant, when particularly, as per the case of prosecution, she was having extra marital relations with deceased. Apart there from, co-accused Bhagwan and Dinesh have been released on bail by the court. The prosecution though recovered one an iron rod, pair of shoes and one wrist watch of deceased at the instance of applicant/accused, but that itself not sufficient to attract the offence, in which she has been arrested. Admittedly, the applicant is the wife of co-accused Bharat. Had been it the fact regarding causing of death by accused Bharat, with conspiracy as alleged, then the recovery shown at the instance of applicant could be recovered from accused Bharat also. However, only to link the role of the applicant such recovery has been shown in her name. Moreover, no test identification parade has been held. At the same time, when the dead body removed it was totally decomposed and DNA report is yet to be received. The applicant is in jail since 28.04.2022. The role of the applicant is less than the co-accused, who were already on bail.

Moreover, the statement of the informant and other witnesses are not corroborated with each other, regarding the fact as to when co-accused Bharat, applicant Pushpa and other two were seen by the witness alongwith deceased on the bus stand, as alleged. On all these counts, the applicant prayed to released on bail and for that ready to abide each and every conditions.

7] Per contra, the learned APP has submitted that, the applicant has taken active part in commission of the crime alongwith co-accused Bharat and others. The offence is serious in nature and punishable with death or imprisonment for life. Certain articles owned by the deceased has been recovered at the instance of the applicant from the room situated at Khed. Therefore, considering the facts and nature of the crime, prayed to reject the application.

8] In the light of submissions advanced, I have gone through the First Information Report and entire documents with charge-sheet. As per defence, informant Vandana has made different statements at different times. It is pertinent to note that, as per the statement of witness Kiran Shantaram Bhokte, on 27.04.2021 he informed the informant Vandana and her husband Vasant that, on 03.04.2021 he saw their sons deceased Mahesh, Bharat and one another on a motorcycle. On 27.04.2021 supplementary statement of informant Vandana was recorded, however, in her statement she did not disclose the name of Kiran Shantaram Bhokte, from whom she came to know that Mahesh was in the company of accused Bharat and three others, when particularly, Kiran was well known by the informant.

9] It is significant to note that, the name of the applicant Pushpa was disclosed to the police by the accused Bharat. In the memorandum statement, he has stated to the police that, his wife Pushpa, brother Bhagwan and friend Dinesh hatched conspiracy, confined Mahesh at Khed in one room and beat him by an iron rod. He further disclosed that Mahesh was taken to Mouje Karkundi, Tal Khed and strangulated there. On the basis of the above said statement of co-accused Bharat, the applicant and other co-accused came to be arrested. In the charge-sheet, record regarding the identification parade of the applicant is not finding place. It was expected from the investigating officer to conduct test identification parade of the applicant at the hands of witness Kiran Bhokte, who substantive prima-facie that, the applicant/accused was last seen in the company of deceased Mahesh. Except certain recovery at the hands of applicant/accused, no material is with the prosecution to keep the applicant behind bar for want of convict her. It is interesting to note that, when the applicant was having extra marital relations with deceased Mahesh, why she will commit murder by hatching conspiracy with her husband and others. No motive to that effect is prima-facie on record to hold the guilt of the applicant/accused. Admittedly, the investigation is completed and charge-sheet is laid before the court. At the same time, co-accused Bhagwan and Dinesh have already been released. There is no record regarding criminal antecedents of the applicant. So far apprehension raised regarding absconding, could be protected by imposing strengthen conditions. At this stage, the DNA report of the deceased is yet not filed. Hence, considering the entire facts and circumstances, I do not find further detention of the applicant in jail. In the result, application deserves consideration. With this, I proceed to pass the following order.

ORDER

1. Application is allowed.
2. Applicant / Accused – Pushpa Bharat Dhonge of Crime No. 238/2021 for the offences punishable under sections 302, 201, 363, 364 and 120(B) of the Indian Penal Code, registered with Khed Police Station, shall be released on bail on furnishing P.R. Bond for the sum of Rs. 25,000/- with one or two solvent sureties in the like amount.
3. The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.
4. The applicant shall not indulge in similar activities in future.
5. On failure to present for three consecutive dates, the prosecution is at liberty to apply for cancellation of bail.
6. In the above terms, the bail application stands disposed off.

Khed.
Date : 21.07.2022

(S. N. Rajurkar)
Additional Sessions Judge,
Khed-Rajgurunagar, Dist- Pune.