

ORDER BELOW APPLICATION (EXHIBIT 5) IN
SESSIONS CASE NO. 69/2021
(STATE VS. MANISHA)
(PASSED ON 02/03/2022)

Nature of the Application.

1. This is an application filed by the accused-Manisha Bhima Dhane (for short 'accused') seeking bail under Section 439 of the Code of Criminal Procedure (for short 'Cr.P.C.') in Crime Register (for short 'C.R.') No. 220/2021 registered at Mangalwedha police station under Sections 302 and 120-B read with Section 34 of the Indian Penal Code (for short 'I.P.C.').

Contents in the Application.

2. The accused has contended that in the first information report (for short 'F.I.R.') lodged by Omkar Bhosale (for short 'informant') it is alleged that his sister-accused's husband-Bhima (for short 'Bhima') was missing since 19/04/2021. Therefore, the accused lodged missing report. He received information that one person is found dead on Mangalwedha to Solapur road near canal. He and his relatives went at the spot and found that it was the dead body of Bhima. He found marks of shoveling and pommeling and also motorcycle tyre marks near the dead body of Bhima and hence, C.R. No. 220/2021 is registered against unknown person.

3. She is innocent and has not committed any offence. Her daughter had been to her house for delivery and she never went for labour work before and after her daughter's delivery. There is no direct evidence against her. There are no circumstances brought on record to show her connection with the death of Bhima. Section 302 of I.P.C. is not applicable.

4. She is in custody since 22/04/2021. The investigation is complete and final report is filed. If released on bail, she is ready to abide by the conditions imposed.

5. On these grounds the accused has prayed to grant the application.

Contents in the Reply of the Additional Public Prosecutor.

6. The Additional Public Prosecutor (for short 'A.P.P.') has filed reply (Exhibit 6).

7. The A.P.P. has strongly objected the application. He has contended that the accused and the other accused-Ananda have committed serious offence under Section 302 of the I.P.C. The accused and the other accused-Ananda committed murder of Bhima by strangulating. The post mortem report clarify that Bhima died due to asphyxia due to strangulation. The other accused-Ananda had showed the place where Bhima was murdered. During investigation it is transpired that the accused and the other accused-Ananda were having illicit relations, therefore, they killed Bhima. Bhima tried to save himself while killing and strong evidence to that effect was found on the spot.

8. If the application is granted the accused will pressurize the witnesses and will hamper the trial.

9. On these grounds the A.P.P. has prayed to reject the application.

The Arguments.

10. I have heard Smt. D. D. Patil, advocate for the accused and Shri. S. V. Wangikar, A.P.P for the prosecution, in extenso.

11. They argued in consonance with the contentions in the

application, say and referring the documents produced on record. In order to avoid repetition it is not necessary to note those arguments.

Points and Findings

12. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether a case has been made out by the accused for granting the relief of bail, as prayed for ?	No.
2)	What order ?	Application Rejected.

Reasons as to Point Nos. 1 and 2.

13. The F.I.R. clarifies that the other accused-Ananda was having illicit relation with the accused and Bhima was objecting this illicit relation and therefore, the accused and the other accused-Ananda killed Bhima.

14. The final report clarifies that the accused and the other accused-Ananda killed Bhima by strangulating. Under such circumstances when Bhima is killed brutally by the accused and the other accused-Ananda, it cannot be said that she is falsely implicated in the offence.

15. The statement of Vaishali Nichal-accused's daughter and Mamaji-accused's son is to the effect that the other accused-Ananda used to visit their house and was taking the accused with him for agricultural work.

16. The evidence on record showed that the other accused-Ananda was having illicit relation with the accused, which Bhima was

not liking. Therefore, the accused and the other accused-Ananda killed Bhima mercilessly. The statements of the witnesses prove that the accused is involved positively in killing Bhima, prima-facie. Therefore, it cannot be said that the accused was not involved in killing Bhima.

17. The memorandum panchanama of the other accused-Ananda prepared under Section 27 of the Evidence Act prove like cloudless sky that he showed the spot where Bhima was murdered.

18. Above all, in the postmortem report the probable cause of death is opined as '**due to asphyxia due to strangulation**'. This opinion is corroborated by the injuries mentioned in column No. 17 of the post mortem report namely :-

Skin blackened and swollen due to decomposition changes. Skin eroded over ligature mark at some places. Complete circular ligature mark seen below thyroid cartilage. Ligature mark is present in the form of pressure abrasion over the anterior aspect of neck below the level of thyroid cartilage directed backwards, completely encircling the neck of size 62 cm cm*4 cms, situated 5 cm below right mastoid, 7 cm below chin, 2 cm above the center of suprasternal notch, 5 cm below left mastoid. Overlapping mark (Double mark) seen behind neck. Area below the ligature mark was hard on palpation. On dissection of neck, underlying subcutaneous tissue is pale glistening with underlying strap muscle of neck, thyroidcartilage, cricoidcartilage, hyoid bone fracture with haematoma seen.

19. The accused has denied her involvement in the offence in toto. However, considering the number and nature of injuries seen in the photos of Bhima and also in the post mortem report, I find no force in the arguments of the accused that she and the other accused-Ananda are not responsible for the death of Bhima. In my firm opinion the injuries found on the person of Bhima were caused definitely due to

strangulation by the accused and the other accused-Ananda. Thus, it is clear that Bhima died due to strangulation. Therefore, the defence of the accused that she is not responsible for the death of Bhima is not at all believable.

20. After considering the facts and circumstances and the role played by the accused in commission of crime it is clear like cloudless sky that the accused has committed an offence under Sections 302 of the I.P.C. which is of serious nature. There is sufficient evidence against the accused, prima-facie. Therefore, the accused is not entitled for bail.

21. I am unable to persuade myself with the argument advanced by Smt. Patil, advocate for the accused that the accused is entitled for bail because (i) she is not involved in any criminal activity (ii) she is falsely implicated in this case with ulterior motive. (iii) there is no direct evidence against her (iv) she is a woman and (v) there are no circumstances brought on record to show her connection with the death of Bhima. The reasons are :-

- That positive involvement of the accused is brought on record that she and the other accused-Ananda killed Bhima by strangulating, prima-facie.
- That the offence alleged to have been committed by the accused is very serious.
- That the possibility of the accused tampering with the witnesses cannot be ruled out considering her involvement, the nature of offence and more specifically considering the fact the witnesses are closely related to her.
- That inspite of knowing the fact that she is a woman,

she was involved in killing Bhima, prima-facie, therefore, her womanhood cannot become a ground to release her on bail.

- That nothing is brought on record by the accused to prove prima-facie that she is falsely implicated in the offence.
- That considering my discussion, supra.

22. The ruling namely Pradeep Shivaji Shinare Vs. The State of Maharashtra, 2013 ALL MR (Cri) 1317, relied by Smt. Patil, advocate for the accused is of no avail because in that case considering the nature of injuries observed by the autopsy surgeon on the victim and the assault as described in the F.I.R. the accused was released on bail. Such is not the fact in the case on hand. In this case the injuries found on the person of Bhima showed that the accused and the other accused-Bhima brutally murdered him by strangulating as he was hurdle in their illicit relations and in view of my finding, supra.

23. To sum up, the offence with which the accused is charged is of serious nature. **There is prima-facie evidence to hold accused's involvement in the offence** (emphasis supplied). The facts disclosed from the final report would show that the evidence collected is sufficient to constitute an offence under Section 302 of the I.P.C. as well as positive involvement of the accused. If the application is granted it will hamper the trial. The involvement of the accused in the crime registered against her is clear. **Considering the merits of the matter, gravity of the offence and positive involvement of the accused, she is not entitled for bail.**

24. In view of the above-mentioned facts and circumstances of

the case, I am declined to grant bail to the accused.

25. It is made clear that the observations made in this order are made for the limited purpose of this application only and all parties are at liberty to agitate their respective cases at the time of trial in the case on merit without being prejudiced even in the least by any of the observations made in this order.

26. Accordingly, I answer point No. 1 in the negative and point No. 2 as application rejected.

27. In the result, following order :-

ORDER

The application (Exhibit 5) is rejected.

(Pronounced in the open Court).

Date : 02/03/2022.

(M.B.Lambe)
Additional Sessions Judge,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 02/03/2022
- (d) Order uploaded on : 02/03/2022