

**SESSION CASE NO. 63 OF 2023**

(CNR No. MHST01-001539-2023)

*(Mrs. Chhaya Namdev Bhoite Vs. The State of Maharashtra)*

**ORDER BELOW EXH.15**

*(Passed on 01.11.2023)*

This is an application under Section 439 of the Code of Criminal Procedure, 1973 (In short, "Cr.P.C.") for release of accused **Mrs. Chhaya Namdev Bhoite** on bail who has been arrested by Wathar Police Station in C.R.No.107/2023 for an offences punishable under Sections 302, 341, 120B, 504, 506 r/w. 34 of the Indian Penal Code, 1860 (In short, "IPC") and Section 3/25 of Arms Act,1959.

02] Perused F.I.R. and charge-sheet. Heard Ld. Advocate Shri. Gawade for accused, Ld. Advocate Shri. Chikane for complainant and Ld. APP Shri. Muke for the State of Maharashtra.

03] The case of prosecution is that, deceased Sunil Shankar Bhoite was the brother of the informant Mohan Shankar Bhoite. Present applicant-accused no. 4 is the wife of another brother of deceased and informant viz., Namdev Shankar Bhoite. Present applicant-accused no.4 has two daughters namely, Reshma and Sushma. Accused no. 1 Ravi Balwant Yadav is the husband of Reshma and No. 2 Sandip Balwant Yadav is the husband of Sushma and son-in-law of present accused. Over the matrimonial dispute with her husband, present accused has been residing separately since 1989. She has inherited immovable property bearing Gat no.633 from her mother, situated under the jurisdiction of 'Manmoda' village. She sold her share in this property to

the accused no. 3 Umesh Bhoite on 12.08.2022. It is the prosecution that this property was under the cultivation of the husband of present accused namely, Namdev Shankar Bhoite. On this count, there was a dispute between present accused and the family members of deceased .

04] One another field property bearing Gat no. 625 was possessed by Shankar Bhoite in the name of the deceased by **mortgage-deed** (बेचनपत्र). However, the mutation entry to that effect remained to be taken and this field property was being shown in the name of present applicant-accused no. 4 Chaya Bhoite in the revenue record. Namdev Bhoite had filed the civil suit bearing R.C.S.No.239/2022 against his wife Chaya i.e. present applicant-accused no. 4 and other co-sharers, in the Court of Civil Judge Junior Division, Koregaon. In short, the present applicant and other accused were not on good terms with the deceased and his brothers on account of land dispute.

05] In so far as alleged incident is concerned, F.I.R. disclosed that on 17.04.2023 at about 07.07. p.m., when the informant Mohan Shankar Bhoite was at his home, his nephew Sai Sunil Bhoite informed him on phone call that accused No. 1 and 2 came in Car when he was proceeding on the motorcycle of his father towards the field. They obstructed their motorcycle and on instigation of accused no. 2, accused no. 1 fired bullet on his father Sunil Shankar Bhoite. One Sherkhan Pathan and Fardin Pathan took the injured to Government Hospital at Pimpode Budruk. On receipt of this information, informant Mohan Bhoite rushed to hospital along with his wife. Informant Mohan Bhoite came to know that Sunil Bhoite died due to the bullet injuries.

06] It is contended that there is enmity between them and the family of applicant-accused no. 4 Chhaya on account of title over agricultural field and Civil suit is pending in that respect. Accused no.1, 2 and present accused used to threaten to destroy crops in the disputed land. They also threatened to kill deceased Sunil Bhoite. Out of the said dispute, accused have hatched conspiracy and committed murder of deceased Sunil Bhoite. With these allegations, the informant Mohan Shankar Bhoite lodged report to Wathar Police Station.

07] Ld. Advocate for the applicant submits that there is no direct evidence against the accused. She has been roped in the case mere on suspicion. There was no reason for her to hatch the conspiracy to eliminate the deceased who was her brother-in-law. She has been arrested just for the reason that accused no. 1 and 2, the assailants are her son-in-law. It is submitted that admittedly, the applicant is having dispute with her husband with regard to title over Gat No. 625 and 633 but merely on this ground, no conclusion can be drawn that she has hatched the conspiracy of murder to kill deceased.

08] Ld. Counsel for accused submitted that the witness Pravin Atmaram Bhoite is not reliable who claimed that on 14.04.2023 when he was proceeding towards the Bhairavnath Temple of the village, he saw the present accused with the co-accused in the house of accused Chaya Bhoite. He heard the conversation between them wherein accused Chaya Bhoite was murmuring to accused Sandip Yadav that our proposed plans cannot work out unless we finish the deceased or the informant Mohan. He claimed that during conversation accused Sandip was saying that he has managed the arms to give effect to their plan.

09] Ld. Advocate for the applicant-accused submitted that the said witness Pravin Atmaram Bhoite is the interested witness. His statement is recorded about one month after the incident. According to him, he heard the conversation between the accused person on 14.04.2023, but he did not feel it necessary to report the matter to police. He remained a silent till 13.05.2023 when his statement was recorded under Section 161 Cr.P.C. Ld. Advocate further submits that the conduct of this witness appears to be unnatural and if the statement of Pravin Bhoite is excluded then there is no evidence of conspiracy against the present accused. It is vehemently submitted that it is highly impossible for a person proceeding on a road of heavy traffic to hear a secret talk going in between conspirators in a house adjacent to the road.

10] It is submitted that while deciding the bail application of co-accused Umesh Bhoite, this Court has already drawn the prima facie conclusion that in normal circumstances it is highly impossible for a person to hear the secret conversation from a public road that allegedly took place within four corner of wall. It is submitted that a person who hatched the conspiracy, would not select a place within sight of a public road for their secret talk. He submits that if there had been conspiracy between the accused persons, they would have selected the secluded place for their talk and would not choose the house situated along the side of the public road.

11] Ld. APP for State as well as Ld. Advocate for the complainant submitted that the root cause of the incident is the dispute between the present accused and the family members of her husband.

She is the main conspirator. The record shows that she is having a dispute with her husband Namdev with regard to the field Gat no. 633 which was purchased by the family members of co-accused Umesh Bhoite. She is also having dispute with her husband and his family members over the field bearing Gat No. 625. It was vehemently submitted that as per the F.I.R, accused Sandip Yadav and Ravi Yadav who are son-in-laws of present accused have committed the murder, over the dispute in respect of Gat no. 625.

12] Having regard to the facts and circumstances of the case it seems that present accused and her son-in-laws were on loggerhead with the deceased and his brothers over the land dispute. Regular Civil Suit No. 52/2021 is filed by the wife of accused Sandip against the deceased and his brothers. Regular Civil Suit No. 239 of 2022 filed by Namdev Shankar Bhoite against the present accused is pending. One R.T.S. appeal was also filed by deceased Sunil Shankar Bhoite against the present accused. In addition to this, one Non Cognizable Case was registered at the instance of the deceased on 15.09.2022 against the present accused and accused no. 1 and 2.

13] From the charge-sheet, it is clear that there is property dispute between present accused and Namdev over Gat no. 633 and Gat no.625 and the present accused and her son-in-laws were on inimical terms with deceased.

14] The conspiracy can be inferred from the circumstances and express agreement need not be proved. The meeting of minds of two or more person is a sine qua non. No doubt, conspiracy is often hatched up in utmost secrecy. There was no prima facie evidence against accused

no. 4 Umesh Bhoite except the statement of Pravin Bhoite. Therefore, he was released on bail by this Court but such are not the facts so far as the present applicant is concerned.

15] For an offence of conspiracy an expressed agreement need not be proved. Evidence with regard to transmission of thoughts leading to sharing of thought relating to the unlawful act is sufficient. The conspiracy is an inference from circumstances. There cannot always be much direct evidence about it. The existence of conspiracy and objective can be inferred from the surrounding circumstances and parties conduct. If the case of prosecution is seen from this view, it will find that even if, the statement of witness Pravin Bhoite is kept aside just for considering this bail application, the other circumstances on record prima facie connect the link of present accused with the crime. Therefore, she cannot take the advantage of the ground of parity.

16] It is further important to note that the deceased and accused were close relatives. The witnesses are also the relatives of both parties. Deceased's minor son namely, Sai is the eye-witness of the incident. He has stated in his statement before police that accused no. 1 and 2 by their Car chased the motorcycle of his father. They overtook the motorcycle and stopped the Car in front of motorcycle. Accused no. 2 Sandip direct the accused no. 1 to shoot and kill his father. After firing they both ran away from the spot.

17] If the accused is released on bail there is every possibility that witnesses may be pressurized or induced. Considering material available on record, I am not prepared myself to accept the plea of bail

raised by the accused. Hence, the following order.

**ORDER**

The Application Exh. 15 is rejected.

Place : Satara

**Date : 01.11.2023**

(Ashok S. Jadhav)

**Addl. Sessions Judge, Satara.**