

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1691 OF 2021

Gulfasha @ Alisha Mehraj Shaikh Applicant
versus
State of Maharashtra Respondent

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- Mr.Aniket Vagal, Advocate for Applicant.
- Smt.A.A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 28th JUNE, 2021
(Through video conferencing)

P.C. :

1. This praecipe is moved in disturbing circumstances. It is mentioned in the praecipe thus ;

“The circulation is sought for speaking to the minutes as in the order dated 18.6.2021, inadvertently sec.302, under which offence was registered is not mentioned and therefore the Trial Court is not accepting the said order to deposit the cash.

The urgency is that 10 month old son of applicant is also inside the jail with the Applicant and on that ground This Hon’ble court granted provisional cash Bail.”

Nesarikar

2. The order is question was passed by this Court on 18/06/2021. In the opening paragraph of the order it was mentioned thus;

“The applicant is seeking her release on bail in connection with C.R.No. 444 of 2020 registered at Nigadi Police Station, Pune, on 20/11/2020 under sections 307, 306, 494, 498(A), 504, 511 read with Section 34 of the Indian Penal Code. The applicant was arrested on 19/11/2020 and since then she is in custody. The investigation is over and the charge-sheet is filed.”

3. Thereafter the case was discussed and operative part was passed. In paragraph No.7 it was mentioned that the Applicant was in jail along with her 10 months old son. Considering all the factors mentioned in the order, operative part was passed at paragraph No.8, which reads thus;

“8. Hence the following order.

ORDER

(i) In connection with C.R. No. 444 of 2020

registered with Nigadi Police Station, Pune, the Applicant is directed to be released on bail on her furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(ii) Looking at the prevailing circumstances, it may not be possible for the applicant to furnish sureties immediately. Therefore, initially the applicant is permitted to furnish cash bail for the same amount. The applicant will have to furnish the sureties, as directed, within three months from today.

(iii) The application stands disposed of accordingly.”

4. Learned counsel for the Applicant states that in spite of this order and in spite of urgency mentioned in the order itself, the trial Court has not accepted cash bail and has not released the Applicant on bail as of today.

5. This is serious breach of order passed by this Court. The trial Court was expected to follow the clear directions issued

in the operative part of the order mentioned in paragraph No.8 of that order. The trial Court was not concerned with the other narration as well as reasoning part in the order. There is absolutely no ambiguity in the operative part of the order and it was duty of the trial Court to follow the order. In spite of that, unnecessary hurdles are created in giving effect to that order. Learned counsel for the Applicant states that specious reason given for not releasing the Applicant, was that section 302 of IPC was not mentioned in first paragraph of the order.

6. This Court does not have to explain the narration mentioned in this order to the trial Court. However, to clarify this, it is necessary to mention that, initially the offence was registered u/s 307 of the IPC on the basis of statement given by the deceased herself. Subsequently, the deceased had succumbed to her burns and the informant was described as 'the deceased' in the order. There is also reference to the 'dying declaration', in paragraph No.7. In spite of this, the trial Court exceeding its jurisdiction, has refused to obey order of this Court, specifically

mentioned in paragraph No.8 as the operative part. This has seriously affected the Applicant's valuable right of getting released on bail at the earliest. Her liberty is affected in spite of clear directions of this Court.

7. If there was any ambiguity in the order, it was for the parties and in particular was for learned APP, who had appeared in the matter, to point it at. The order could have also been corrected by a higher forum. But the trial Court had no authority to question that order. In any case, the operative part of the order is very clear and there was absolutely no ambiguity. The trial Court was supposed to follow these directions mentioned in the operative part.

8. In spite of this order, the Applicant had to suffer in jail custody for more period than was necessary, particularly when she had 10 months old child with her. Considering the repeated concerns expressed by the Hon'ble Supreme Court regarding unnecessary crowding of the jail, the attitude of the trial Court is not proper in this case.

9. In these circumstances to prevent any further hurdles and only for that purpose, I am clarifying and adding section 302 of IPC in the first paragraph of the order. However, the trial Court will have to explain its stand and report will have to be submitted to this Court.

10. Hence, the following order :

ORDER

- (i) The Applicant shall be released forthwith pursuant to the directions mentioned in paragraph No.8 of the order dated 18/06/2021 on the conditions mentioned in that part of the order.
- (ii) In the order dated 18/06/2021, in the first paragraph, along with other sections, section 302 of IPC be mentioned.
- (iii) Corrected order be uploaded.
- (iv) The concerned officer of the trial Court, who has not followed the operative part of

the order dated 18/06/2021, shall submit his report within 10 days before this Court.

- (v) The office is directed to send a copy of this order to the concerned trial Court at the earliest.
- (vi) Stand over to 14/07/2021 for compliance.

(SARANG V. KOTWAL, J.)

Corrected order dated 18/06/2021 reads thus;

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CRIMINAL BAIL APPLICATION NO. 1691 OF 2021

Gulfasha @Alisha Mehraj Shaikh Applicant
Versus
The State of Maharashtra Respondent

Mr. Aniket Vagal, for the applicant.
Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th JUNE, 2021
(Through Video Conferencing)**

P.C. :

1. The applicant is seeking her release on bail in connection with C.R.No. 444 of 2020 registered at Nigadi Police Station, Pune, on 20/11/2020 under sections 302, 307, 306, 494, 498(A), 504, 511 read with Section 34 of the Indian Penal Code. The applicant was arrested on 19/11/2020 and since then she is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Aniket Vagal, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. The FIR was lodged by the deceased Sheetal Banpatte herself. Her statement was recorded as F.I.R. As she died subsequently, it now becomes a Dying Declaration. She has stated that she got married to one Sachin Banpatte and they had a daughter. They had got married in the year 2014. In January 2020, the informant came to know that her husband was having extra marital affair with the present applicant. For that reason there used to be quarrels between the informant and her husband.

The informant came to know that, her husband had got married secretly with the present applicant. After coming to know this, she was under mental pressure. On 19/11/2020, the informant carried petrol in a bottle. She went to the house of the present applicant. While going there, she poured kerosene on herself. She had kept a matchbox with her. She stood in the door of the applicant's house. She picked up a quarrel with the applicant. In the meantime, there was a scuffle between the applicant and her sister on one hand and the informant on the other hand. During that scuffle, matchbox fall down. It is further alleged that the applicant lit a match stick causing fire, because of petrol which the informant had already poured on herself. She suffered burn injuries. She started running towards a government hospital which was nearby. She lodged her FIR after she was admitted in the hospital.

4. Learned Counsel for the applicant submitted that the FIR itself shows that the informant was holding serious grudge against the applicant. The informant had herself poured petrol on

herself. She had carried the match box. Therefore her intention to implicate the applicant in a false case is more than clear. He submitted that the applicant has a son who is 10 months old. The child is with the applicant in the jail. There is weak evidence against the present applicant. There are no eye witnesses. In this background, the applicant deserve to be released on bail.

5. Learned APP left the decision of this application to the discretion of this Court on humanitarian ground.

6. I have considered these submissions. With the assistance of both learned Counsel, I have perused the charge-sheet. As rightly submitted by learned Counsel for the applicant, there are no witnesses who have stated that the applicant had used a match stick to set the deceased ablaze. There are statements of witnesses like Chandrabhaga Shinde, Malini Pawar and Anita Kshirsagar who had seen the deceased already having caught fire. She was running towards the hospital.

7. The FIR-Dying Declaration of the deceased herself also mentioned that it was the deceased who had poured petrol on herself and had carried a matchbox. Therefore, at this stage sufficient doubt is created against the prosecution case. The applicant is a lady. She is in custody since 19/11/2020. The investigation is over and the charge-sheet is filed. She is in jail along-with her 10 months old son. Considering all these aspects, the applicant deserves to be released on bail.

8. Hence the following order.

ORDER

- (i) In connection with C.R. No. 444 of 2020 registered with Nigadi Police Station, Pune, the Applicant is directed to be released on bail on her furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Looking at the prevailing circumstances, it may not be possible for the applicant to furnish sureties immediately. Therefore, initially the applicant is permitted to furnish cash bail for the same amount. The applicant will have to furnish

the sureties, as directed, within three months from today.

(iii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)