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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4199 OF 2024

Mamta Birendra Yadav ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Amit Icham a/w Chaitanya Purankar for the Applicant.
Ms. Mayur S. Sonavane, APP for Respondent-State.

CORAM: MANISH PITALE, J.
DATE : 14th DECEMBER 2024

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is seeking bail as she was arrested on 1st February 2019 in connection with FIR No. I-50 of 2018 registered at Narpoli Police Station, Dist. Thane, for offences under Sections 302 and 201 read with 34 of the Indian Penal Code, 1860 (IPC).

3. There are 3 accused persons in the present case. One of the accused persons was juvenile, who was released and the co-accused person was released by an order dated 19th September 2022 passed by this Court (Coram: Prakash D. Naik, J., as he then was) in Criminal Bail Application 690 of 2020, on the ground of the period of incarceration suffered by the said co-accused person and in the face of the fact that there was no progress in the trial.

4. The learned counsel for the applicant submits that the present case is a case of circumstantial evidence and the applicant is a woman, who has suffered incarceration for almost 7 years (more than 6 years and 10 months). It is submitted that the co-accused person having been granted bail on 19th September 2022 itself on the ground of long incarceration, this applicant also deserves to be granted relief, for the reason that even after the said order was passed by this Court in favour of the co-accused, there is no progress in the trial and not a single witness has been examined. He relied upon the position of law clarified by the Supreme Court in such circumstance to the effect that Constitutional Courts ought to exercise their power to enlarge the accused under-trials on bail.

5. The learned APP, on the other hand, submits that witness summons have been issued and the trial can be completed. It is submitted that the applicant in the present case is alleged to have caused the murder of his own 14 months old child in the backdrop of an extra marital affair with the co-accused person. It is submitted that husband of the applicant is the informant in the present case and there is enough material on record to indicate that the applicant not only caused the death of the minor child by strangulation, but she also died tried to destroy the evidence by making an attempt to bury the body of the minor. It is submitted that in the face of such facts, this Court may not show any indulgence to the applicant.

6. The Supreme Court in various judgments has highlighted the aspect of right to speedy trial of accused under-trial being a facet of right to life under Section 21 of the Constitution of India. It has been emphasized that seriousness of the offences registered against the accused under-trial, cannot be a ground to deny bail, despite the fact that such an accused under-trial has suffered long period of incarceration and there is remote possibility of the trial being completed within reasonable period of time. In the case of ***Javed Gulam Nabi Shaikh v/s. The State of Maharashtra, 2024 SCC OnLine SC 1693***, the Supreme Court has relied upon earlier judgments in the cases of ***Hussainara Khatoon & Ors. v/s. State of Bihar, 1981 SCC 81***, ***Kadra Pehadiya & Ors. v/s. State of Bihar, 1981 3 SCC 671***, ***Union of India v/s. K. A. Najeeb, (2021) 3 SCC 713*** and ***Satender Kumar Antil v/s. Central Bureau of Investigation and Anr., (2022) 10 SCC 51***, to hold that in such cases, Constitutional Courts must exercise their power to enlarge the accused under-trials on bail, while imposing appropriate conditions.

7. It is also indicated in the aforesaid judgment and earlier judgments that even in cases, involving offences under special Statutes, where the accused under-trials are required to satisfy a higher threshold for being enlarged on bail, the Constitutional Courts ought to exercise the aforesaid power to grant relief to such accused under-trials.

8. Applying the said position of law to the facts of the present

case, this Court is inclined to allow the present application. It is to be noted that in the order passed by this Court granting relief to co-accused (Rakesh Mahesh Patel) on 19th September 2022, this Court had taken note of the fact that charge had been framed on 16th January 2019 itself and that there was no progress in the trial. More than 2 years have gone by and yet, the stage of the trial is the same and not a single witness has been examined by the prosecution. In the meanwhile, the applicant, who is a woman, has already suffered incarceration for a period of 6 years and 10 months i.e. almost 7 years. The list of witnesses shows that the prosecution intends to examine 36 witnesses. There is hardly any material to indicate that the trial would commence forthwith and there is remote possibility of the trial being completed within a reasonable period of time.

8. In such circumstances, this Court is, as Constitutional Court, is inclined to exercise its power to grant relief to the applicant, in the facts and circumstances of the present case.

9. In view of the above, the application is allowed in the following terms:

- (a) The applicant shall be released on bail in connection with FIR No. I-50 of 2018 registered at Narpoli Police Station, Dist. Thane, on furnishing P.R. Bond of Rs. 25,000/- and one or two sureties in the like amount.
- (b) The applicant shall cooperate with the trial Court for

expeditious trial and she shall attend each and every date, unless exempted by the trial Court, for reasons to be recorded in writing.

- (c) The applicant shall not tamper with the evidence of the prosecution and she shall not influence the informant, witnesses or any other person concerned with the case.
- (d) The applicant, upon being released on bail, shall place on record of the trial Court the details of her Contact Number and residential address with updates in case of any change.

10. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The application is disposed of.

MANISH PITALE, J.