

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 718 OF 2021

1. Kausalya Dnyanoba Dhemdhere
2. Sau. Bharati Rajendra Shirke
3. Sau. Jayshree Ranjeet Shinde ...
Applicants

Versus

The State of Maharashtra ...
Respondent

WITH
CRIMINAL INTERIM APPLICATION NO. 1012 OF 2021
IN

CRIMINAL BAIL APPLICATION NO. 718 OF 2021
Shri Hiralal Manikrao Kadam ...
Applicant/Intervener

IN THE MATTER BETWEEN

1. Kausalya Dnyanoba
Dhemdhere
2. Sau. Bharati Rajendra
Shirke
3. Sau. Jayshree Ranjeet ... Applicants
Shinde

Versus

The State of Maharashtra ... Respondent

....
Mr. Ajinkya Udane a/w. Mr. Nikhil Agrawal, Mr. Imtiaz
Bijapure for the Applicants.

Mr. S. S. Pednekar, APP for the Respondent - State.
Mr. Naaz Sayed i/b. Rahul Kadam, for Intervener.

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CORAM : PRAKASH D. NAIK, J.

DATE : 01st APRIL, 2021

PC :

. The applicants are seeking bail in C.R.No.0557/2020 registered with Shikrapur Police Station, Tal. Shirur, Dist. Pune for the offences punishable under Sections 306, 498-A read with 34 of Indian Penal Code (for short 'I.P.C.')

2. The First Information Report (for short 'F.I.R.') was lodged on 14th September 2020 by Hiralal Manikrao Kadam alleging that his daughter Sheetal was married to Deepak son of Dnyanoba Dhemdhere on 4th July 2010 and a child who is presently aged 8 years is born out of the wedlock. His son-in-law Deepak died on 11th April 2020. He was engaged in brick kiln business in partnership with Rajendra Shirke, husband of Bharati (sister-in-law of the deceased). Deceased Sheetal used to tell him and his son that Rajendra had borrowed money from Deepak and an amount of Rs.80 Lakhs is due from him. Mother-in-law Kausalya, sister-in-law Bharati were abusing her and physically assaulting her and Rajendra used to instigate them. Her father-in-law had kept her jewellery weighing about 35 to 40 tolas in a bank locker. For withdrawal of the amount and

for sale of ornaments and for transferring the property situated at Talegaon in the name of the accused Nos.2 and 4. The accused had constantly pressurized her. Sister-in-laws of the deceased and sister of mother-in-law used to visit her home. They used to make the deceased realize that they are entitled for share in the property. The deceased used to inform the complainant that her father-in-law was a good person, cultured and that he would take care of her. There was an incident dated 7th September 2020, when some religious ceremony relating to death of Deepak was arranged in their house. Complainant and his wife had visited to matrimonial house of his daughter. None of the family members including her in-laws, sister-in-laws or sister of mother-in-law had any conversation with him. After the function was over, they returned home. At 9.40 p.m. in the night, the deceased Sheetal called on mobile phone of her brother and expressed regret about what had happened. She stated that the applicants had indulged into a verbal altercation with her. The complainant somehow consoled his daughter and assured that if the

harassment continues, he would bring her to the parental house. On the next day, he was informed that, Sheetal had ended her life by jumping into well. Complainant found injuries on her body. Without recording Panchnama body was sent for Post Mortem. She was killed.

3. The applicants preferred an application for anticipatory bail before the Sessions Court. The said application was rejected. The applicants then preferred an application for anticipatory bail before this Court. The said application was rejected by Order dated 23rd October 2020. While rejecting the said application, this Court had observed that during the course of investigation, statement of minor child of the deceased was recorded. The child had stated that after his father had expired, his two aunts were staying in their house and they were harassing his mother. His father and accused No.2 Rajendra were into brick kiln business. He was told by his mother that an amount of Rs.70 Lakhs was due from Rajendra. Four to five days prior to the incident, his elder aunt and younger aunt had put up a ploy of false

altercation and he has also stated that his two aunts, his grandmother, his grandfather, cousin grandmother and Rajendra used to compel his mother to do household work and the aunts did not co-operate. He narrated incident where his mother was very frustrated, on account of the said harassment and she had hit her head against the wall. He stated that because of the harassment, his mother was constrained to commit suicide.

4. This Court further observed that during investigation, statement of Santosh Dhamdhere, who is residing in the same village has been recorded. He is the husband of sister of deceased Sheetal. He had received a recorded message on his Whatsapp from the deceased. In the first message dated 23rd August 2020, she expressed that she was taking an extreme step and expressed her despondency and sought assurance from her mother that he will take care of her son. She expressed no grievance against the father-in-law but had stated that she will not spare her mother-in-law as well as two sisterin-laws and it is only because of them, she has to take extreme

step. Another recorded message is dated 5th September 2020 when she referred to the discord on account of the trivial issues that took place in the house and for which she has attributed role to her sister-in-law. She referred to false put up fight between the two sisters. Transcript of the recording reveal that the two sister-in-laws and the mother-inlaw harassed her on account of claim, their share in the property and earnings of their deceased brother.

5. The Court further observed that the deceased was in a depressed state of mind and the harassment which she underwent at the instance of the applicants was the immediate factor which prompted her to take the extreme step as she had expressed to Santosh that she is unable to tolerate it. The Court declined to grant relief to the applicants.

6. The Order dated 23rd October 2020 was challenged by the applicants before the Hon'ble Supreme Court. By Order dated 5th January 2021, the Hon'ble Supreme Court had rejected the Special Leave Petition filed against the order of this Court. It was observed that, there is no

ground to entertain the Special Leave Petitions and as such the same are dismissed. The Court however observed that,

"It shall, however, be open for the petitioners to surrender within four weeks' and make an application for regular bail, which shall be considered by the Court expeditiously in accordance with law.

7. The applicants preferred an application before the Court of learned J.M.F.C. on 12th January 2021 stating that the applicants are appearing suo-motu and surrendering before the Court and filing the application for bail. They are surrendering to the Court and thus, their bail application be decided on merits. The learned Magistrate on the same day passed the order "call say of I.O.". The application bears the endorsement by the applicants as "Not pressed". The Court further passed the order on the same day which is as follows :

"The application is not pressed before filing of say by I.O. Hon'ble Supreme Court has granted time of four weeks for surrender. Hence, this application is filed".

Thus, the applicants had withdrawn their application for surrender and grant of bail.

8. The applicants thereafter, preferred an application before the

Sessions Court and stated that the applicants are present in the Court and in pursuant to the order of the Hon'ble Supreme Court, they are surrendering before the Court and making the application. The learned Additional Sessions Judge, disposed of the said application vide Order dated 16th January 2021. The order mentions that on making inquiry with the learned Advocate for the applicants as to why they are not surrendering before the concerned Court of J.M.F.C., learned Advocate pointed out paragraph 7 of application wherein it was mentioned that having surrendered before the learned J.M.F.C. at Shirur, the Court was not ready to accept surrender without hearing the I.O. Thereafter, they were made to wait for the whole day, but I.O. was not available and thereafter, they have approached the Sessions Court. The learned Additional Sessions Judge then observed that in these circumstances, it is deemed fit to

direct the concerned J.M.F.C. to take note of the order passed by the Hon'ble Supreme Court as mentioned above and to follow the appropriate procedure as per law. With these directions, the application was disposed of vide Order dated 16th January 2021.

9. Thereafter, the applicants preferred another application before the Court of learned J.M.F.C. on 18th January 2021. It was stated that the Special Leave Petition was dismissed by the Hon'ble Supreme Court with directions to surrender and apply for regular bail. Four weeks time was granted to surrender and apply for regular bail. The applicants are surrendering and applying for bail within the said period of four weeks. Hence, they may be released on bail.

10. Learned APP filed say that as per the directions of the Hon'ble

Supreme Court bail application may be decided expeditiously and Investigating Officer may be given an opportunity to be heard. As per proviso of

Section 437 of Criminal Procedure Code (for short 'Cr.P.C.') discretion is given to the Court to grant bail to a women.

11.Learned J.M.F.C. Ghodnadi at Shirur by Order dated 18th January 2021, rejected the application for bail. While rejecting the application for bail, it was observed that the accused have surrendered before the Court and taken into judicial custody. On perusal of F.I.R., it transpired that F.I.R. was lodged against six persons. Considering the role of these accused, that they had abused and assaulted the deceased. There was a property dispute. The offence is serious and non-bailable and anticipatory bail was rejected by the Sessions Court and the High Court. In the event of grant of bail, there would be hurdle in investigation and custodial interrogation the Court is required to consider the nature of gravity of accusation, severity of punishment, danger of the accused absconding if released on bail, and likelihood of offence being repeated. Considering the accusation and gravity of the offence, it will not

be proper to release the accused on bail as investigation is in progress.

12.Surprisingly, the applicants preferred an application for interim bail on the same day before the same Court. In the said application, it was mentioned that as per the directions of the Supreme Court, the applicants have surrendered before the Court and filed application for bail to avoid any detention of the women, the Supreme Court had also given directions to the Court to decide their bail application expeditiously. However, the bail application is rejected. They are ready to abide by the directions of this Court and will appear before the Court on the next date. Hence, they may be released on P.R. bond till date of final order on their bail application by way of interim arrangement. Surprisingly, the learned J.M.F.C. passed the following order :

"Perused application and heard learned Advocate for accused. Bail application of accused is rejected but they want to file second bail application in Sessions Court, accused are women. The accused

Jayshree has baby of two and half years. She is present in Court along with baby. Another accused of 15 years with mentally retarded. The accused Kausalya is more than 62 years. The accused ready to give personal bond for their appearance in Sessions Court. Hence accused released on interim bail on furnishing Personal bond of Rs.15,000/-. Accused are directed to file bail application there are exceptional and sufficient grounds."

13.The applicants thereafter, preferred an application before the Sessions Court viz. Criminal Bail Application No.422 of 2021. The said application was preferred on 21st January 2021. In the said application, it was stated that the applicants had appeared before the Court of learned J.M.F.C. with surrender application on 12th January 2021. The Court was then not ready to accept surrender without hearing the I.O. The learned J.M.F.C. bent upon hearing I.O and for the whole day Investigating Officer was not available. Therefore, the applicants were required not to press the application of surrender. The learned J.M.F.C., Shirur was not ready to follow the directions of the Hon'ble Supreme Court and the Investigating Officer

was not supposed to give consent to the said application and hence, the applicants had surrendered before the Sessions Court. Pursuant to the directions of the Sessions Court, they had appeared before the learned Magistrate. Hence, the applicants had preferred second regular bail application.

14.The learned Sessions Judge by Order dated 1st February 2021, rejected the Bail Application No.422 of 2021 preferred by the applicants with directions that the information be provided to the concerned Court and the Investigating Officer. While rejecting the said application, it was observed that, "I.O. in his status report has raised strong grounds of objections giving reference to the material disclosed during investigation. The I.O. was personally present in the Court and submitted that on 12th January 2021 he was present in the Court of J.M.F.C., Shirur and that the applicants who had approached the Court for surrendering left the Court before 3.30 p.m. along with the application itself. The applicants have mislead the Court that the learned J.M.F.C. made them wait for the entire day

and that the I.O. was not present. Since the lodging of F.I.R. itself, the applicants were absconding and therefore, no investigation could be done from them. If the application is granted, the applicants may pressurize the witnesses. It is necessary to obtain their police custody. The application was opposed by the prosecution. It was further observed that the police have gathered strong prima facie materials against the applicants. The deceased had spoken to her brother on the mobile and sent recorded message on Whatsapp.

15. The learned Sessions Judge considered the observations of the High Court while rejecting the application for anticipatory bail. The Court further observed that decision in the case of Niranjana Singh relied on by the applicants is required to be distinguished in the light of the peculiar facts of this case. The Supreme Court has held that there is no ground to entertain the S.L.P. filed against the order of the High Court. There has been no interrogation of the applicants. They are the

major culprits. Investigation is in progress. Hence, application deserves to be rejected. The Court further directed that the order be communicated to concerned Court and Investigating Officer.

16. The investigating officer then brought to the notice of J.M.F.C. the order passed by Sessions Court on 2nd February 2021. The learned J.M.F.C. passed the following order on 2nd February 2021.

"Information was received from I.O. that bail application of accused is rejected by Hon'ble Sessions Court. Accused are abusing process of law and not followed conditions. Hence PR bond of accused forfeited and issue remand warrant against accused."

17. Learned Advocate for the applicants contends that in view of the order of the Supreme Court, they had surrendered before the Magistrate. Their surrender was not accepted. The applicants are ladies. They have been falsely implicated. There is no prima facie case against the applicants. The applicants are women. One of them have a small child. Sections 306 and 498-A are not attracted. The applicants are entitled to bail. They need not be in

custody for applying bail under Section 439 of Cr.P.C. Investigation is now complete. The learned Sessions Judge has committed an error in rejecting the application for bail. In the application it is mentioned that applicants are approaching and surrendering and seeking bail.

18. Reliance is placed on the following decisions :

(i) Sundeep Kumar Bafna V/s. State of Maharashtra and another

(2014) 16 Supreme Court Cases 623;

(ii) Niranjana Singh and Another V/s. Prabhakar

Rajaram Kharote and others (1980) 2 Supreme Court 559;

(iii) Ishan Deshmukh V/s. State of Maharashtra 2011(2) Mh.L.J.

361;

(iv) State of Haryana and Others V/s. Dinesh Kumar (2008) 3

Supreme Court Cases 222;

(v) State V/s. Maguni Charan Sahu and 10 Others 1983 SCC

Online Ori 137 delivered by the Orissa High Court;

(vi)Haji Peer Bux and Others V/s. State of U.P. and Others 1993

SCC Online All 444.

19. Learned APP submitted that the offence is of serious nature.

The application for anticipatory bail was rejected by the Sessions

Court, High Court and the Special Leave Petition was dismissed by the Supreme Court. The applicants were however, permitted to surrender and apply for regular bail within a period of four weeks. The Apex Court had not specified whether they should surrender before the learned Magistrate or before the Investigating Officer. The applicants preferred an application before the learned Magistrate on 12th January 2021. The said application was not pressed. The applicants have raised false contention that they were made to wait for the whole day. The I.O. was present in the Court on 12th January 2021. The applicants had left the Court at 3.30 p.m. The learned Magistrate had committed an error in granting interim bail. After rejection of the application, the learned Sessions Judge had directed that the Court of learned

Magistrate to proceed with the application in accordance with law. The offence is serious. While rejecting the application for anticipatory bail, this Court had made observations and assigned reasons. It was indicated that the custodial interrogation of the applicants was necessary. Without undergoing custody, the applicants are repeatedly making applications that they should be released on bail. They were not subjected to custody for a single day. There is no change in the situation, after rejection of the application for anticipatory bail by this Court and dismissal of Special Leave Petition. The contention of the applicants in their application that the Hon'ble Supreme Court had permitted them to surrender to avoid custody is not correct. There is no such observation. The fact that the order of the High Court is confirmed would indicate that the applicants are not entitled for relief under Section 438 of Cr.P.C. and their custodial interrogation is necessary. This application is not maintainable in law. The applicants without going into custody cannot state that bail may be granted to them under Section

439 of Cr.P.C. The Judgments relied upon by the learned Advocate for the applicants are not applicable in this case. The learned Magistrate has issued warrant against the applicants. The applicants be directed to appear before the learned Magistrate by rejecting this application with directions to the said Court to proceed in accordance with law by taking the applicants into custody.

20. Learned Counsel for the intervener also advanced similar submissions. It is submitted that despite refusing to grant anticipatory bail under Section 438 right up to the Apex Court, the applications have preferred applicants on similar grounds. The offence is of serious nature. The accused must be in custody. They should surrender before the learned Magistrate. Warrant is issued against them. False submissions are advanced by the applicants. They are misleading the Courts. The victim was compelled to commit suicide. No leniency can be shown to the applicants. The merits of the case was considered by the Sessions Court, this Court and the Apex Court. Without surrendering

being in custody in the facts of this Court should not entertain the application. The decisions relied upon by the learned Counsel for the applicants were delivered in the facts of the case. The same are not applicable in the present case.

21.I have perused the documents on record. The F.I.R. was registered on 14th September 2020. Specific allegations are made against the applicants in the F.I.R. Offence is of serious nature. While rejecting the anticipatory bail, this Court has taken note of the overt act attributed to the applicants. The observations are reproduced in the earlier paragraphs. This Court had observed that prima facie the applicants had instigated the deceased to take the extreme step. This is not the case where vague allegations are levelled against the applicants. Their custodial interrogation is therefore necessary. The applicants are seeking bail without undergoing custody. It would be mockery of the Justice to grant bail to the applicants by entertaining this application in the peculiar facts of this case. It is pertinent to note that the order of this Court

dated 23rd October 2020 was challenged before the Apex Court. The Special Leave Petition was dismissed and thus, the order of this Court was confirmed. The fact that the Hon'ble Apex Court permitted applicants to surrender and apply for bail would not mean that there was no need of custodial interrogation. The record would indicate that the applicants are trying to mislead the Courts. The Investigating Officer has strongly disputed the contention of the applicants that he was not present in the Court and the applicants were made to wait for the entire day. The applicants had preferred an application before the Court of J.M.F.C. on 12th January 2021. The learned Magistrate has passed the order calling for say of I.O. The applicants cannot contend that the learned Magistrate was not ready to hear the application without say of the I.O. There is no illegality in directing I.O. to file say. It is apparent that the applicants were not willing to undergo custody and therefore, did not press the application since time was granted by the Supreme Court to surrender. The order clearly state that the application is not

pressed before filing of say by I.O. This would indicate that the applicants were not interested in waiting for the say filed by the Investigating Officer. Surprisingly, it was contended before the learned Sessions Judge, while preferring an application on 16th January 2021 that the applicants are surrendering before the said Court and making the application. In that application, it was contended that the learned Magistrate was not ready to accept surrender without hearing the I.O. Thereafter, they were made to wait for the whole day, but I.O. was not available and thereafter, they have approached Sessions Court. The contention is apparently baseless. The record indicate that the Investigating Officer had filed the report and stated that the applicants had left the Court without waiting for the Investigating Officer at 3.30 p.m. In any case, the applicants cannot contend that since I.O. was not present, they have not pressed the application and then make an application for surrender before the Sessions Court. Learned Sessions Judge, directed the learned Magistrate to follow appropriate procedure

as per law and the application was disposed of on 16th January 2021. The applicants again moved an application before the learned J.M.F.C. on 18th January 2021 and again submitted that they are surrendering before the Court. The learned Magistrate by Order dated 18th January 2021 rejected the application for bail. Surprisingly, the learned Magistrate had not taken recourse to procedure established by law. The Order dated 18th January 2021 passed by the learned J.M.F.C. indicate that the applicants were taken into judicial custody. After rejection of the application, the applicants moved an application for temporary bail before learned J.M.F.C. It is not pointed out under what provisions of law such an application was moved before the same Court which had rejected the application for bail with the observations on merits. The order does not indicate the period of bail. In application for interim bail preferred before learned J.M.F.C. it was contended that, the applicants are ready to abide directions and they would appear on next date. Bail be granted till next date of final order. The

applicants thereafter, again preferred an application before the Sessions Court which has been rejected by order dated 1st February 2021 with the observations which are referred here-in-above. Thereafter, this application is preferred before this Court.

22. The applicants had surrendered before learned Magistrate. Order dated 18th January 2021 observes that the applicants are taken in custody. The question of again surrendering before the learned Sessions Judge and High Court does not arise. The erroneous order passed by learned Magistrate granting temporary bail has come to an end. In pursuant to order of Sessions Court, the learned J.M.F.C. has forfeited bond and issued warrant.

23. In view of order dated 18th January 2021 passed by J.M.F.C. rejecting application for bail after taking applicants in custody, the application before this Court for surrender and bail cannot be entertained. In Sundeep Kumar Bafna v/s. State of Maharashtra (supra), the accused had preferred an application for bail under Section 439 before the

High Court by contending that he had surrendered before the Court. It was observed that High Court could have taken the accused in custody and proceeded with perusal of prayer for bail and in the event of its coming to conclusion that sufficient grounds had not been disclosed for bail, necessary orders for Judicial or Police custody could have been ordained. In Niranjana Singh V/s. Prabhakar Kharote (supra), the Supreme Court has explained the meaning of custody within Section 439 of Cr.P.C. as person in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the Court having been remanded by Judicial order, or having offered himself to the Court's jurisdiction and submitted to its orders by physical presence. It is pertinent to note that in the same decision the Court has observed that, accused is stated to be in Judicial custody when he surrenders before the Court and submits to its directions. The accused applied for bail before Magistrate who refused bail and still the accused without surrendering before Magistrate, obtained

order for stay to move Sessions Court. The direction of Magistrate was wholly irregular and may be, enabled the accused to circumvent the principle of Section 439 Cr.P.C. The Court did not take serious view of such course, indifferent to mandatory provisions, by subordinate magistracy since, the accused made up for it by surrender before Sessions Court. The other decisions relied upon by applicants also deal with similar issue and also relate to grant of bail.

24. In the present case, after rejection of bail by learned J.M.F.C. vide Order dated 18th January 2021, applicants were granted interim bail, in spite of the fact that learned Magistrate had taken the applicants in Judicial custody. The applicants than by mincing words had preferred bail application No.422/2021 before the Sessions Court. It was titled as Second Bail Application under Section 439

Cr.P.C. It was stated that the applicants are now approaching the

Court (Sessions Court) for regular bail on the grounds stated therein. It was also contended that

it is the second regular bail application of applicants. Thus, that was an application for regular bail without being in custody nor it was stated that they are surrendering. After rejection of the said application, the applicants have approached this Court. This application is wholly misconceived and circumventing principle of Section 439 of Cr.P.C. The applicants had surrendered before learned J.M.F.C. on 18th January 2021. They were taken in custody. The applicants cannot prefer application for surrender and bail before this Court. This is clear case of abuse of process of law.

25. The applicants shall appear before learned J.M.F.C. Shirur in view of orders dated 18th January 2021 and 2nd February 2021 issuing remand warrant. The learned Magistrate shall follow procedure of law. The bail application of the applicant was rejected by learned J.M.F.C. and Sessions Court. Pursuant to subjecting the applicants to custody, the applicants will be at liberty to prefer application for bail before J.M.F.C. which may be dealt with in accordance with law.

26. Hence, I pass following order.

O R D E R

- (i) Criminal Bail Application No.718 of 2021 is rejected and disposed of.
- (ii) The applicants shall appear before the J.M.F.C., Shirur on 12th April 2021.
- (iii) Learned J.M.F.C. shall follow due process of law in view of Order dated 18th January 2021 refusing bail and taking applicants in custody as stated therein and in accordance with Order dated 2nd February 2021.
- (iv) Applicants will be at liberty to prefer application for bail before J.M.F.C. in terms of observations made hereinabove in this order.
- (v) Criminal Interim Application No.1012 of 2021 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)