

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 174 OF 2015

Pandurang Jagannath Patil

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ashok M. Misal for Applicant
Ms. Veera Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 12, 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 01/08/2014 in crime no. 106 of 2014 registered at Shahuwadi Police Station for offence punishable under sections 498 (A), 312, 313, 314, 201, 109 r/w 34 of Indian Penal Code and sections 3, 4, 5 of Medical Termination of Pregnancy Act and sections 23, 24 & 27 of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994. Investigation is completed and charge-sheet is filed on 27/10/2014.

2) It is the case of prosecution that on 31/07/2014, Ramchandra Sadhu Patil, the unfortunate father of Rupali lodged a report at the police station

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alleging therein that his daughter was married to Hemant Patil on 30/03/2011. Rupali was living in a joint family. In 2012 Rupali gave birth to a baby girl. Thereafter, she had conceived pregnancy after 3 years. Two weeks prior to 31/07/2014, Rupali had visited her maternal house. She had disclosed to her parents that she is carrying pregnancy of 4 months. She had also disclosed to her parents that members of her matrimonial family were annoyed with the fact that she has given birth to a baby girl and therefore, she was being forced to undergo sex determination test. She had undergone the said test. Doctor had disclosed that it is a female foetus. On 30/07/2014, at about 9.00 pm, one Maruti Shankar Patil informed the first informant that Rupali had been taken to Kolhapur at Saraswati Apple Hospital for treatment. Informant inquired about the same and proceeded to Kolhapur. In the meanwhile, he received an information that his daughter Rupali had died and that her body has been kept in the morgue at C.P.R. Hospital, Kolhapur. At about 11.00 pm, first informant reached C.P.R. Hospital. He had seen that there was trail of blood on her legs. Even prior to conclusion of the post mortem, Hemant Patil i.e. husband of Rupali had left the hospital. After the funeral, first informant learnt that after undergoing sex determination test, when the family had realized that she was

carrying female foetus, they had attempted to terminate her pregnancy at home. That the said operation had failed and she had died due to profuse bleeding. On the basis of the said report, offence was registered against members of the family of Rupali. Informant did not know the name of the doctor who performed the said operation. The name of the applicant who acted as an agent of the doctor, also does not appear in the F.I.R.

3) In the course of investigation, it was revealed that husband of the deceased i.e. Hemant had been to village Shimpe. That, the maternal aunt (Parvati Patil) of Hemant Patil had disclosed to the police that Hemant and Surekha (Sister of Hemant) had been to village Shimpe. They inquired with her about present applicant specifically. Thereafter, witness i.e. maternal aunt of Hemant Patil had called upon present applicant. They had been to his house. Hemant had disclosed to his maternal aunt that present applicant is well acquainted with Dr. Sanjay Balkrishna Shinde. That present applicant had accompanied Hemant and Surekha to Sonawade. On 30/07/2014, sister of Parvati Patil had undergone opthalmic operation and therefore, Parvati had been to village Kapshi. At that time, she had seen that her sister, her sister's

daughter-in-law Rupali were at home. At about 1.30 pm, Pandurang Patil i.e. present applicant accompanied with Dr. Shinde had come to their house. Present applicant had introduced Dr. Shinde to the witness. He has specifically informed her that doctor Shinde is to carry out medical termination of pregnancy of Rupali. Soon thereafter, Rupali was made to sleep in a room. Dr. Shinde performed the operation. Foetus was kept in a plastic bag. Rupali was unconscious at that time. Doctor Shinde has given his contact number to Surekha and thereafter doctor Shinde had left the house in the company of present applicant. Witness has categorically stated that present applicant had brought Dr. Shinde to the house of the deceased. Similarly, statement of Shobha Ananda Patil would show that present applicant had brought doctor Shinde to the house of the deceased. He had informed her that doctor Shinde is to perform an operation upon Rupali. She has also reiterated that Dr. Shinde left the house in the company of present applicant.

4) Learned counsel for the applicant submits that name of the applicant is not stated in the F.I.R. It is further submitted that applicant herein was

arrested on 01/08/2014, whereas, statements implicating him are recorded on 14/08/2014 and therefore, according to him, said statements cannot be relief upon. As against this, learned APP rightly submits that the person who had named present applicant as an agent of doctor Shinde had no animosity against present applicant. There was no reason for false implication. In fact, witness no. 1 happens to be maternal aunt of husband of the deceased. She had in fact contacted applicant at the behest of husband of the deceased. Husband and sister-in-law of the deceased had come in search of present applicant to village Shimpe. Unless they had reliable sources of information, they would not come in search of present applicant. Learned APP further submits that there is evidence to show that on the day of incident, Smt. Surekha Kadam who was instrumental in aborting female foetus of her sister-in-law had called upon present applicant more than twice on 30/07/2014. This is sufficient to establish that she had called upon the applicant and all of them had acted with common intention.

5) The act committed by doctor Shinde is heinous offence. That they were insensitive towards health of the patient. Medical Council has specifically

reported that he is a quack, bogus doctor. It is apparent on the face of the record that present applicant happens to be an agent of doctor Shinde. Learned counsel for the applicant claims parity with doctor Redekar. It is the case of prosecution that doctor Redekar is a Radiologist who had performed sex determination test upon Rupali. Dr. Redekar had already disclosed to the relatives of Rupali that they may approach to Dr. Shinde to perform medical termination of pregnancy upon Rupali. According to learned counsel, in fact, Dr. Redekar is an agent of Dr. Shinde. That Dr. Redekar was arrested on 13/08/2014. He has been enlarged on bail by Ad-hoc Additional Sessions Judge, Kolhapur vide order dated 04/09/2014. Unfortunately, Prosecution has not filed any application under section 439 (2) of Code of Criminal Procedure, 1973 seeking cancellation of bail. However, it appears that Dr. Redekar had knowledge that Dr. Shinde indulges into such nefarious activities, however, as far as present applicant is concerned, he had actually taken Dr. Shinde to the house of the deceased. He was present when Dr. Shinde was performing operation and had left the house along with Dr. Shinde. It cannot be said that Dr. Redekar had referred the patient to Dr. Shinde. He had only informed that Dr. Shinde performs such operations,

however, sex determination test is also banned. Dr. Redekar had conducted sex determination test and had informed the relatives that it is a female foetus.

6) In the facts and circumstances of the present case, applicant does not deserve grant of bail. Learned counsel for the applicant submits that inf act, applicant is only an agriculturist and he had no knowledge about Medical Termination of Pregnancy Act. He is innocent and therefore, deserves to be enlarged on bail. The said submissions cannot be taken into consideration in the present day scenario where the Courts and Medical Council of India are seriously looking into the ratio of females against males. This amounts to killing a female foetus as if to say that being a female, she has been denied the right to come into this world. Hence, this Court is not inclined to grant bail.

ORDER

(i) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)