Vishal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.804 OF 2015**

Satish Dnyanoba Akhade ... Applicant
vs.
State of Maharashtra ... Respondent

Mr. H.S. Venegavkar i/b. Mr. G.B. Lal, for the Applicant
Mrs. R.V. Newton, APP for the Respondent-State.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **AUGUST 07, 2015**

**P.C.:**

. The application is moved for bail. The applicant/accused is prosecuted for the offences punishable under Sections 302, 498(A), 323, 504 and 506 of the Indian Penal Code in C.R. No. 288 of 2014 registered with Yavat police station, Pune. One Dynanoba Chaudhari, a father of the deceased Archana gave complaint on 19th September, 2014 about the murder of his daughter Archana.

2. It is the case of the prosecution that Archana married with the applicant/accused in the year 2003 and out of their wedlock one son and one daughter were born. However, since 2011-2012 the

applicant/accused got addicted to liquor and started harassing the deceased Archana. He used to abuse the deceased and demand money from her parents. He used to assault her. Therefore, the complainant and her family members were called and the matter was settled. However, the assurance was given by the applicant/accused that he will not behave in cruel manner henceforth with Archana. But the things were repeated. Therefore, Archana made complaint about the demand of money made by him. On 10th August, 2014 the applicant/accused demanded Rs. 50,000/- and he threatened her that if he would not paid Rs. 50,000/- he would hand her. On 19th September, 2014 at around 2.00 am the applicant/accused contacted the complainant on his cell phone and told him that he had committed murder of Archana and she is at Kunjirwadi. After this message from the applicant/accused, the father of the deceased rushed to Kunjirwadi and there he was asked to go to the hospital. As he went there, he found that Archana was dead. He noticed ligature mark around the neck of Archana. Thereafter the postmortem was conducted. Then he filed complaint. The applicant was arrested immediately on 19th September, 2014. Hence, this bail application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent. There is no evidence against the applicant/accused. He has not committed any offence much less the offence of murder. He submitted that there is variance in the statement of complainant. There is doubt in respect of the cause of death of Archana because the postmortem report is not produced along with the charge sheet. It creates doubt as to whether postmortem was conducted or not. The postmortem report is an essential document and it must be produced along with the chargesheet. He submitted that therefore the right of the applicant under Section 167 of the Code of Criminal Procedure is invoked and the applicant/accused is entitled to be bailed out as a proper charge sheet is not filed within 90 days of the arrest of the applicant.

4. The learned prosecutor opposed the bail application. She relied on the statement of the informant. She submits that there is a extra judicial confession. There are statements of witnesses stating that Archana was harassed at the hands of the applicant. She further sought permission to produce the postmortem report before this Court. She admitted that at the time of filing of the charge sheet the

postmortem notes were not produced. She submitted that though the investigating officer has written a letter to the medical officer of Sasoon hospital, Pune, no postmortem report was sent by them and therefore the postmortem notes could not be produced along with the charge sheet filed before the Court.

5. It is to be noted that the postmortem report is not produced before this Court. The learned prosecutor informs the Court that postmortem report is not received by the investigating officer till 6th August, 2015 from the Sasoon hospital, Pune. It is noted that it is the investigating officer who has to take efforts to go to the hospital and collect the documents which are required for the investigation for the purpose of section 173 of Code of Criminal Procedure. The police have ample powers and therefore it is their duty to collect the papers and they should not wait for the papers. The prosecutor to take necessary steps.

6. The learned counsel for the applicant/accused has submitted that the postmortem report did not found as a part of the charge sheet filed under Section 173 of Code of Criminal Procedure

and it is a necessary document. The report which is filed before the Court can not be called a report under Section 173 of Code of Criminal Procedure and therefore the applicant/accused is entitled to bail under Section 167 of Code of Criminal Procedure. This statement can not be accepted as it is erroneous submission because though the document/postmortem report is necessary, however even if it is not produced by the investigating officer, it does not mean that whatever documents are filed before the Magistrate Court under Section 173 of the Code of Criminal Procedure can not be called as charge sheet and therefore, the accused gets right under Section 167 of Code of Criminal Procedure. If any document which is a part of the investigation if not produced along with the charge sheet under Section 173 of the Code of Criminal Procedure, then Court cannot rely on it unless it is produced and copies are given to the defence.

7. Perused the first information report and the other documents. The statement of the complainant discloses that the postmortem was conducted at the Sasoon hospital. He has specifically mentioned in it that after conducting the postmortem, the doctor handed over the dead body of Archana to him. This *prima facie* shows

that the postmortem was conducted. The learned prosecutor drew my attention to the medical certificate issued by Sasoon hospital, Pune dated 19th September, 2014. It shows the probable cause of the death is "*ligature/compression over neck, viscera preserved for chemical analysis*". I have no hesitation *prima facie* to rely on the medical certificate which discloses that there are ligature mark around the neck of the dead body of Archana. There are statements of Bhimabai Chaudhari and Sopan Chaudhari that they have also seen the ligature mark on the neck. Apart from this, there is evidence of extra judicial confession of the applicant/accused to his father in law Dynanoba Chaudhari. There is *prima facie* evidence showing cruelty and the harassment at the hands of the applicant/accused to the deceased. There is also a statement of child on page 38 i.e. the son of the applicant that he had seen his father throttling the neck of his mother.

8. In view of the above, it is a case of murder punishable under section 302 of Indian Penal Code. It is not a fit case to grant bail to the applicant. Hence, the bail application stands rejected.

**(MRS.MRIDULA BHATKAR, J.)**