

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1752 OF 2015

Mr.Chandrashekhar Prabhakaker Tambat... Applicant/Accused

vs.

The Senior Inspector of Police,
DCB, CID Crime Branch, Unit-11,
Mumbai & anr.

...

Respondents

Mr.Rizwan Merchant a/w Mr. Swapnil Wagh a/w Mr. Sandeep Bali i/b.
Rizwan Merchant & Associates for the applicant.

Ms. A.A.Mane, APP, for the State.

Mr. M.A.Harpade, API, Unit XI, ACB, CID, Mumbai present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 13th October, 2015.

P.C.

Heard. This is an application under Section 439 of the Code of Criminal Procedure, 1973.

2. The applicant herein is charge-sheeted for the offence punishable under Sections 302, 370, 374 read with Section 34 of the Indian Penal Code in Crime No.46 of 2015 investigated by the officers of the DCB, CID, Unit-11, Mumbai (C.R. No.115 of 2015 registered at Goregaon Police Station, Mumbai). The charge-sheet is filed on 3.6.2015. The applicant had filed

Criminal Application No.1141 of 2015 along with his wife Mrs. Vandana Chandrashekhar Tambat. This Court (Coram: Sadhana S. Jadhav, J.) had partly allowed the application. This Court had rejected the application filed by the present applicant on 30.6.2015.

3. That after 30.6.2015, a supplementary charge-sheet has been filed on 2.9.2015. The applicant has therefore filed this subsequent application praying for enlargement on bail. At the time of last hearing of this application on 30.6.2015, this Court had seen the Inquest Panchnama which showed that the omentum was protruding from the body of the deceased. Neither the prosecution nor the defence could explain as to how the omentum was protruding, especially when the victim has died due to 100% burn injuries which had formed sepsis immediately. This Court had seen that there is no mention of the protruding of omentum in the post-mortem notes. It was, therefore, doubtful as to whether the omentum was really protruding as was noticed in the inquest panchnama.

4. The learned counsel for the applicant at the threshold has drawn attention of this Court to the conclusions drawn by the Investigating Officer on the basis of the evidence collected in the course of further investigation

after 30.6.2015. The report shows that an opinion was sought from the medical officer about the protruding of omentum from the body of the deceased. The investigating officer has not recorded the statement of the medical officer. However, the opinion was sought. The medical officer has not denied that the omentum was protruding, but there is no explanation as to why it was not noticed at the time of conducting the autopsy on the dead body. The opinion that is recorded in the supplementary charge-sheet is that due to deep burns, the omentum must have protruded.

5. It is pertinent to note that in the present case, the deceased had sustained 100% burn injuries. The incident has occurred in the intervening night of 20th and 21st February, 2015 approximately at about 2.45 a.m. to 3 a.m. On 21.2.2015, the post-mortem was conducted on 21.2.2015 at about 11.10 a.m. The rigor mortis was present at the time of conducting autopsy. As far as column No.17 is concerned, it is stated that the deceased had sustained 100% deep burns. All the burns were ante-mortem in nature. There is no reference to the protruding of the omentum. There is no reference to external injuries. There is not even a passing reference to the protruding of the omentum. However, the medical officer has given an opinion that the protruding in all possibility, is because of deep burns the omentum must have protruded. It is further pertinent to note that the cause

of death is due to `sepsis'. This would further not inspire confidence of the Court since the deceased Jyoti had died on the spot due to extensive burns. There was no time for formation of sepsis after the death. It appears that the medical officer is really not serious either while conducting the post-mortem or while giving his opinion. The cause of death is shown as death due to sepsis.

6. The learned counsel for the applicant has submitted that in fact the deceased was sleeping in the hall of the house along with the pregnant daughter of the applicant. Perused the statement of the daughter. The daughter of the applicant has disclosed to the police that in the intervening night, Jyoti was rather sleeping on a mattress on the ground. That when she woke up, initially she had seen Jyoti sleeping. She does not know as to when her father and brother had returned home. That she had smelt kerosene in the house. However, her mother had informed her that they do not have kerosene or phenyl in the house. The daughter has further disclosed that when she got up in the middle of night, she did not find Jyoti sleeping. She presumed that she must have gone to the washroom and went to sleep again. Since Jyoti did not return for quite some time, she woke up her parents and then all the family members had searched for her. She was

not found in the house. They opened the rear door of the house and found Jyoti in flames just outside the kitchen but in the courtyard of the house. According to her, her mother had fainted upon seeing Jyoti engulfed in flames. The applicant and his daughter had caught hold of the wife of the applicant and therefore they did not exercise the presence of mind to extinguish the flames immediately. Jyoti continued to be in flames for quite some time. After the wife of the applicant was pacified, the applicant had been to one of the residents in the society, who happens to be his friend. They then proceeded to the police station and lodged a report. The death was registered as Accidental Death under Section 174 of Cr.P.C. Subsequently the applicant along with his wife were initially prosecuted for the offence punishable under Section 306 of IPC.

7. The learned counsel for the applicant submits that only because the police personnel had disclosed to the police that till the applicant was requested by the police they had not made any attempts to extinguish the flames. That only after the police personnel had requested the applicant and his family members had poured water upon Jyoti and extinguished flames. The learned counsel for the applicant submits that this cannot be the evidence for prosecuting the applicant for an offence under Section 302

of IPC. According to the learned counsel for the applicant, there is no evidence worth its name to prosecute the applicant for the offence punishable under Section 302 of IPC much less to detain him in custody as further incarceration would amount to punitive detention. The learned counsel submits that the applicant is 61 years old and that further incarceration on the basis of such evidence would be unwarranted and unjustified.

8. This Court has meticulously and carefully scrutinized the compilation of the first charge-sheet as well as the supplementary charge-sheet. It appears that the death of Jyoti has taken place in suspicious circumstances. The panchnama of scene of offence would show that a bed sheet was hung on the window of the kitchen room and Jyoti had died just outside the window of the kitchen room. It is surprising that the police officer who has reduced the panchnama into writing has presumed that even prior to committing suicide, Jyoti did not wish to put on lights in the house as the residents also would wake up. That therefore she had put the bed sheet to the window. There was darkness in the house. It is surprising that the family members while searching for her in the house had not noticed the bed sheet hung to the window. There was no reason for the police personnel to arrive at a conclusion or to presume that the deceased

had put that bed sheet to the kitchen window. There are serious lacunas in the investigation, more particularly the medical evidence. Since the deceased had died an instantaneous death on the spot, there was no time for formation of sepsis or development of rigor mortis within just 7 hours from the time of death. In the supplementary charge-sheet, the medical officer has stated that the time of death of Jyoti cannot be determined.

9. It is a matter of record that the young girl was working as a maid servant in the house of the deceased. The daughter of the applicant has disclosed that a few days prior to the death, she was acting in an irritating manner. No reasons are assigned. It is a case of custodial death and it is incumbent upon the applicant to at least make an attempt to give the cause for commission of suicide or to explain the circumstances in which Jyoti has died while she was in their custody.

10. The learned counsel for the applicant has placed reliance upon the purported suicide notes written by Jyoti. In the said notes, she has written “Good morning”, “Very good morning”, “Sorry”, “Very very sorry”. That Jyoti has died in the intervening night of 20th and 21st February, 2015. There is nothing on record to indicate that Jyoti who had never attended

school had written in English. It is shown in the Supplementary Charge-sheet that she had sent a greeting card to one of the students of the wife of the applicant. The greeting card along with the alleged suicide note was sent to handwriting expert. The opinion is that “No definite opinion can be given for want of adequate material.” Be that as it may, all these aspects may be considered at the time of framing charge. As on today, the applicant is being prosecuted for offence under Sections 302, 370 and 374 of IPC. The applicant does not serve bail.

11. Taking into consideration the fact that serious lapse in the investigation could be because of tampering of investigation, this Court is not inclined to release the applicant on bail.

12. Hence, the application being sans merits, stands rejected.

(SMT.SADHANA S.JADHAV, J.)