

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5265 OF 2016

Kishor Kashinath Pardeshi .. Applicant

Versus

The State of Maharashtra .. Respondent

Mr.R.R. Mantri, Advocate for the applicant.

Mr.S.D. Ghayal, A.P.P. for respondent/State.

CORAM : A.M. BADAR,J.

DATED : 10.10.2016

P.C. :-

1. The applicant/accused in Crime No.64 of 2016 registered with Chopada City Police Station, Dist. Jalgaon, for offence punishable under section 302 and 354 of the Indian Penal Code, by this application, is seeking his release on bail after filing of the charge-sheet.

2. Heard learned Counsel for the applicant/accused. By taking me through entire charge-sheet, learned Counsel for the applicant argued that perusal of spot panchanama as well as photographs filed with the charge-sheet go to show that there was parapet wall of about 5 ft. to the well in which the incident in question allegedly took place. Learned Counsel further drew my attention to photographs of deceased Dipika and submitted that she was

fully grown up lady, making it impossible for the applicant to lift her and throw her in the well. Learned Counsel, therefore, argued that the case of improbability creeps up in the prosecution case. Learned Counsel for the applicant further drew my attention to the statement of Darbar Jadhav and argued that his worker Restem has telephonically informed him that there something fell in the well. Learned Counsel argued that Restam had not informed Darbar that he has seen the applicant nearby the well. My attention was also drawn to the statement of Police Patil-Maharu to point out that initially a report of accidental death was registered. Learned Counsel drew my attention to the station diary entry taken at about 2.55 a.m. on 02.04.2016 regarding accidental death. He also drew my attention to the timings stated by the witnesses while narrating the incident including the timing of visit of the applicant to the house of the police patil disclosing incident of assault on him by members of the prosecuting party. With this, learned Counsel argued that after completion of investigation, considering nature of the evidence against the applicant, he is entitled for bail.

3. Learned A.P.P. opposed the applicant by pointing out F.I.R. as well as statement of eye-witnesses to the initial incident which caused Dipika Jadhav (since

deceased) to leave her house. Learned A.P.P. then argued that there are eye witnesses who are stating that the applicant chased Dipika. My attention is also drawn to the statement of Restam - watchman in the field where the incident took place.

4. Perused the charge-sheet. Considered the rival submissions.

5. According to the prosecution case, the applicant was having illicit relations with Dipika Jadhav (since deceased), who was a middle aged lady. Statement of her daughter Divyani, Suresh Jadhav, Kunal alias Nannu Jadhav, Lalchand Patil go to show that at about 9.00 to 9.30 on 19.04.2016, the applicant was outraging modesty of Dipika Jadhav, in presence of her daughter and other relatives. The witnesses are stating that the applicant was insisting Dipika to continue illicit liaison with her. These witnesses including that informant have disclosed that, fed up with the harassment of the applicant, Dipika started running out of the house and the applicant chased her.

6. Statement of Vikram, Bhagwan and Manoj are to the effect that Dipika was running towards the field chased by the present applicant.

7. The charge-sheet reveals that Dipika died soon thereafter and her dead body was found in the well in the field.

8. Statement of police patil of the village, namely, Maharu shows that the applicant had visited his house at about 10.00 p.m. on 19.04.2016 to report that Lalchand, Suresh and Nannu assaulted him by means of fist and slaps. Maharu further reported that at about 11.00 p.m. on 19.04.2016 Darbar Patil told him that Dipika died and her dead body is found in the well. It appears that accordingly necessary entries were taken in the station diary of the police station.

9. Statement of Darbar Patil recorded during investigation, reflects that Restam Bhilala - watchman of the field informed him telephonically that he heard noise of something falling in the well. Statement of Darbar Jadhav does not disclose that at that time Restam had informed that he had seen present applicant in the vicinity of the well.

10. The charge-sheet reflects that dead body of Dipika Jadhav was found in the field. Report to that effect is lodged by police patil- Maharu Koli on

20.04.2016 itself resulting in registration of the accidental death.

11. Sluggish chronometric sense of villagers is judicially noted fact. Statements of witnesses have disclosed that initially there was incident of outraging modesty of Dipika by the applicant in presence of her several relatives and her own daughter. Probably at that time, the applicant was assaulted by relatives of the deceased. Statement of the witnesses are constantly disclosing the fact that the applicant chased Dipika who ran towards the field. Statement of Restam if taken on itself, then it shows that when he heard sound of something falling in the well, the applicant was seen running away. Thus, prima facie, it is seen that the deceased was lastly seen in the company of the applicant. Soon, thereafter her dead body was found in the well. The deceased died because of drowning. It is as such seen that time gap between the point of time when accused and deceased were lastly seen alive and when the deceased was found dead, is so small that possibility of intervention of any person than accused is impossible. In this view of the matter, it cannot be said that the applicant is not having complicity in the crime in question. My attention was drawn to the report lodged by the present applicant with the police. The effect of

that report and timing of event will have to be adjudicated at the time of trial after recording evidence of witnesses.

12. As complicity of applicant in the offence punishable under section 302 of the Indian Penal Code, which is punishable with death or life imprisonment, is prima facie established, no case for bail is made out. The application is rejected.

13. Needless to mention that these observations are prima facie in nature which shall not have any bearing on the trial.

[A.M. BADAR, J.]