

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

CRIMINAL APPLICATION NO. 1166 OF 2017
IN
CRIMINAL REVISION APPLICATION NO. 65 OF 2017

Devesh Dattabhau Pathrikar
...Applicant

VERSUS

The State of Maharashtra
...Respondent

.....

Shri Shirish Gupte, Senior Advocate with Mr. Joydeep Chatterjee and Mr.A.K.Bhosale, advocates for the applicant

Shri A.B.Girase, P.P. for respondent/State

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CORAM : K.L.WADANE, J.

DATED : 23rd March, 2017

ORAL JUDGMENT :-

Heard Mr. Shirish Gupte, learned Senior counsel the applicant and Mr. A.B.Girase, learned Public Prosecutor for the respondent/State.

2. The applicant has preferred Criminal Revision Application No. 65 of 2017 against the judgment and order, passed by the learned Additional Sessions Judge in Criminal Appeal No. 24 of 2013, dated 28.2.2016, by which the conviction imposed upon the applicant in Sessions Case No. 225 of 2006 by the learned Assistant Sessions Judge on 15.1.2013 is confirmed.

3. The brief facts of the case are as follows :-

PW 6 complainant Vinayak Borse, lodged a complaint to the Police Station, Mukundwadi alleging that his daughter committed suicide in the night intervening 30.12.2005 and 31.12.2005. On the basis of the complaint filed by PW 6 Vinayak offence was registered against the applicant punishable under Section 306 of the Indian Penal Code. PW 10 carried out the investigation and charge sheet was filed against the accused.

4. The prosecution has examined in all 11 witnesses to prove the charge against the applicant. Considering the evidence on record, learned Assistant Sessions Judge convicted the present applicant and sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.5,000/-. The order of conviction passed against the applicant was assailed before the learned Additional Sessions Judge, Aurangabad, who also confirmed the same.

5. I have gone through the evidence of the prosecution witnesses, more particularly PW 1 Amit Borse brother of the deceased, PW 5 Chandrakant Dalvi Press Reporter, PW 6 Vinayak Borse complainant father of the deceased, PW 7 Samir Manager of Rama International Hotel, PW 8 Mr. Godse friend of PW 1 Amit.

6. Considering the entire evidence of these witnesses, prima facie it reveals that there were cordial relations between the family members of

the present applicant and the deceased. In the month of November, 2005, PW 5 Mr. Dalvi met PW 6 father of the deceased and informed that there was love affair between the applicant and the deceased, on which PW 6 Vinayak told him that he is not aware of the said fact.

7. Further, prima facie, it reveals from the evidence of above referred witnesses that on 5.12.2005 at noon time deceased disclosed to PW 1 Amit that at about 1.00 p.m. she had been to the house of the accused. There the accused offered some drinks to her, which she consumed. Then she became unconscious. The accused took her obscene photographs and by showing such photographs the accused was blackmailing the deceased. He was insisting to marry and threatening her that if she does not marry with him he will publish the said photographs and will defame her family. He also threatened that her marriage will not be performed with any other person.

8. It further reveals that on 8.12.2005 PW 8 Godse told PW 1 Amit that the accused has shown him about 20-25 photographs and the deceased and the applicant/accused Devesh. From the further evidence it appears that there was discussion on the subject matter between PW 1 Amit and his other friends, particularly on 16.12.2005 the subject was discussed in the Rama International Hotel by the accused and deceased and there was exchange of words and minor scuffle between PW 1 Amit and the accused.

9. After the incident the investigating officer prepared the spot panchanama and recovered one chit stated to be in the handwriting of the deceased and to prove the handwriting of the deceased, the evidence of Handwriting Expert PW 9 Mr. Kathar is recorded.

10. Considering the series of the events, more particularly deposed by the above mentioned witnesses, prima facie, it appears that there is

reason to believe that the applicant has committed the offence punishable under Section 306 of the Indian Penal Code. The evidence adduced on behalf of the prosecution was examined by the learned Assistant Sessions Judge and re-examined by the learned Additional Sessions Judge, Aurangabad. The finding recorded by learned Assistant Sessions Judge is confirmed by the learned Additional Sessions Judge. Here there is concurrent finding about the guilt of accused.

11. Looking to the situation and the circumstances in which the deceased committed suicide, it appears that there was close proximity between the events and the commitment of suicide.

12. Mr. Gupte, learned Senior counsel appearing for the applicant has relied upon catena of judgments, as follows : -

Vijay @ Munna Bharat Gurkhude vs The State of Maharashtra (Bom. H.C.)
[2016 All MR (Cri) 2566]

Dilip s/o Ramrao shirasrao & others vs State of

Maharashtra and another (Bom. H.C.)
[2016 ALL MR (Cri.) 4328]

S.S.Cheema vs Vijay Kumar Mahajan (S.C.)
[(2010) 12 SCC 190]

Amalendu Pal alias Jhantu vs State of West Bengal
(S.C.)
[(2010) 1 SCC 707]

Kishori Lal vs State of M.P. (S.C.)
[(2015) 9 SCC 639]

Deepak vs State of M.P. (M.P.H.C.)
[1994 Cri.L.J.767]

Ramesh Kumar vs State of Chattisgarh (S.C.)
[2001 Cri.L.J.4724]

Rajendra Paulat Salve vs State of Maharashtra
(Bom.H.C.)
[2006 (1) Mh.L.J. (Cri.) 117]

Manish Kumar Sharma vs State of Rajasthan
(Raj.High Court)
[1995 Cri.L.J. 3066]

Cyriac s/o Devassia vs Sub-Inspector of Police,
Kaduthuruthy (Kerala H.C.)
[2005 Cri.L.J. 4322]

Madan Mohan Singh vs State of Gujrath (S.C.)
[(2010) 1 SCC 628]

Gangula Mohan Reddy vs State of A.P. (S.C.)
[(2010) 1 SCC 750]

M.Mohan vs State (S.C.)
[(2011) 2 SCC 626]

Sohan Raj Sharma vs State of Haryana (S.C.)
[AIR 2008 SC 2108]

Sanju vs State of M.P. (S.C.)
[(2002) 5 SCC 371]

Sonti Rama Krishna vs Sonti Shanti Sree (S.C.)
[(2009) 1 SCC 554]

Netai Dutta vs State of W.p. (S.C.)
[AIR 2005 SC 1775]

Chanchal Kumaria vs U.T.
[AIR 1986 SC 752]

Vyankat Vithoba Palampalle vs Mohan Gundappa
Bukale and ors. (Aurangabad Bench)
[2006 ALL MR (Cri.) 3433]

Shri Jagdish s/o Madhukar Sahare and anr. Vs State
of Maharashtra (Nagpur Bench)
[2007 ALL MR (Cri.) 3396]

However, on perusal of the said judgments, it appears that those rulings can be considered at the time of final hearing of the appeal. Therefore, the above authorities are not applicable for consideration at this stage. Mr. Gupte, learned Senior counsel contended that during trial as well as during pendency of the appeal the applicant was on bail and the accused/applicant has never misused the bail, and as such argued that either the bail granted earlier to the applicant may be continued or the applicant may be granted bail by directing to

furnish fresh bonds.

13. As against this, Mr. Girase, learned Public Prosecutor appearing on behalf of the respondent/State contended that the offence committed by the applicant/accused is serious one and while suspending substantive sentence the Court has to be very careful. He submitted that instead of granting bail, the appeal can be expedited and heard finally. Mr. Girase, learned Public Prosecutor has relied upon the judgment of the Apex Court in the case of reported in AIR 2005 SC 1481. Para no.4 thereof reads thus : -

4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said court can direct that he be released on bail or his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects

and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

14. Looking to the above observations and the fact that prima facie there are reasons to believe that the accused has committed serious offence and that there is prima facie evidence to that effect on record, the accused is not entitled to be enlarged on bail.

15. Hence, Criminal Application No. 1166 of 2017 stands rejected.

(K.L.WADANE, J.)

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