

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 188 OF 2016

Mr.Harshadbhai Balchanddas Patel ...	Applicant
Vs.	
1. The State of Maharashtra)	
2. Manubhai Hargovandas Patel...)	Respondents

ALONG WITH
CRIMINAL APPLICATION NO. 1075 OF 2016
IN
CRIMINAL BAIL APPLICATION NO. 188 OF 2016

Mr. Manubhai Hargovandas Patel	Applicant
vs.	
The State of Maharashtra & Anr.	Respondents

Mr. Niteen Pradhan i/b. Mr. Amrendra Mishra, Advocate for the applicant.
Mr. M.H.Patel – complainant (in person)
Mr.R.M.Pethe, APP, for the State.
Mr. Bhimrao Vhanmane, PI, Malad Police Station present

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 10th February, 2017.

P.C.

Heard. This is an application under Section 439 of the Criminal Procedure Code. The applicant herein is arrested on 27.6.2015 in Crime No.284 of 2015 registered at Malad Police Station on 14.6.2015. The investigation is completed and charge-sheet is filed against the applicant for the offences punishable under Sections 376(1), 306, 506(II)

read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 14.6.2015, at about 2.15 in the afternoon, Ms. Sony daughter of Manubhai Patel was seen on the ground floor of Kingston Palace Building in an injured condition. It was apparent that she had jumped from the 22nd floor of her house, flat No.2201. That a message was given by somebody to the police who were at the Mobile Van. The Station Diary dated 14.6.2015 maintained by Malad Police Station indicates that at about 2.20 a message was received that a woman has jumped from the high-rise tower. The police had reached the scene of offence at about 2.23 p.m. The police had noticed that an unknown person had fallen down and she was in an injured condition. The police had immediately taken her to Shatabdi Hospital, Kandivli. At the time of admission itself, the injured was declared dead at about 2.50 p.m. The message was given to the higher officers. At about 3.30 p.m., the relatives of the injured had been to the Hospital and had identified her as Sony, daughter of Manubhai Patel. On the basis of the report, A.D. No.46 of 2015 was registered at Malad Police Station and investigation was set in motion.

3. The scene of offence panchnama was conducted in A.D.

Enquiry. The inquest panchnama was also conducted in A.D. No.46 of 2015. The spot of incident i.e. the place from where Sony had jumped was shown by Rutul the brother of the deceased. The investigating agency had taken the photographs of the bathroom as she had allegedly jumped from the ventilator of her bathroom. That the panchnama has commenced at 5.10 p.m. and was concluded at 6 p.m. The panchnama was also videographed by the police in the presence of the family members of the deceased.

4. It is the case of the prosecution that on 14.6.2015, Sony had her meals along with her family members i.e. her parents and her brother Rutul. The statement of Rutul indicates that after having lunch, he along with his father were inspecting the itemised phone calls of Sony from her Laptop and were inspecting the bills. Her brother was talking to his friend. The father had tried to knock the door of the bathroom as Sony was not opening the door. The father had to search for the key. The bathroom was opened and the members of the family had seen that the window panes /glasses were removed and they were kept aside. At that time, the father i.e. the first informant ascended the floors and went to the ground floor. He brought the police to the bathroom and they had taken photos and details. Thereafter, they had visited Shatabdi Hospital. When her brother returned

from Shatabdi Hospital, he had gone to the bathroom and there a chit was found behind the bags containing detergent powder. He informed his father about the said letter and then went to the police station. The said suicide note was given to the police. It appears that the suicide note mentions about a incident dated 16.3.2015. However, the same was written as 16.5.2015. Thereafter, the father and brother of the deceased Sony had handed over the letter, the cellphone and a Laptop of the deceased Sony to the police.

5. On 14.6.2015, Manubhai Patel lodged a report alleging therein that sometime in the last week of April, 2015, Sony had informed her sister and mother that the present applicant is likely to rape her. She had also asked her mother to scold him. She was directed by her mother to inform the whole episode to her father. The father had assured her that he would ensure that she is safe. He had given her moral support. From the letter, it appears that on 14.3.2015, the deceased Sony had been to Village Onjha. She had been to meet her friend Jetu, who happens to be the wife of the applicant. They were good friends. It is also alleged that the applicant had taken photos of Sony on 14.3.2015. On 15.3.2015, Sony had requested the applicant to drop her to the house of her cousin Nimisha. It is alleged that in the car, while in transit, the applicant had forced her to have oral sex with

him. He had threatened her at the point of a knife. he had also threatened her that if she disclose about the incident to anybody, he would put acid on her face and expose her to social obloquy by posting her images on social media. According to the complainant, his daughter was embarrassed by the incident that had taken place on 14.3.2015. She was threatened by the applicant. he had sent threatening messages to her on the Laptop as well on the cellphone and as she could not take it, she committed suicide on 14.6.2015. In these circumstances, the applicant is being prosecuted for the offences punishable under Sections 376(1) and 306 of the Indian Penal Code.

6. The papers of investigation would indicate that the call details of deceased Sony would show that on 14.3.2015 at 06.14 p.m. and on 15.03.2015 at 04.44 p.m. and 05.14 p.m. the deceased had called upon the accused. At 5.14 p.m., the call was made by the applicant. It further reveals that on 18.3.2015 at about 08.54 p.m. and 09.10 p.m., the deceased had called upon the accused. On 20.03.2015, 23.3.2015 and 25.3.2015, the deceased had made phone calls to the accused. It is pertinent to note that apparently there was no communication between the accused and the deceased telephonically during the period April, May and June. The deceased had called upon the wife of the applicant only on 14.3.2015. The

deceased was a lawyer by profession.

7. The applicant herein happens to be the original resident of Unjha, District Mehsana, Gujarat. It is not the case of the prosecution that during the period 25.3.2015 to 14.6.2015, the applicant had met the deceased nor there are call details between them during the relevant period.

8. It also transpires from the record that in the first week of May itself, the first informant had learnt about the incident dated 15.3.2015 and had also extended his moral support to his daughter. However, it is not the case of the prosecution that either the parents or the brother of Sony had contacted the present applicant and questioned him about the said conduct.

9. The learned counsel for the applicant has demonstrated before this Court that the suicide note is doubtful as there are several discrepancies. It is also demonstrated before this Court that the incident is shown as of 16.5.2015 and not 16.3.2015 and therefore it is doubtful as to whether the said statement was tutored or tampered with. However, at this stage, it is not necessary to consider the genuineness or truthfulness of the suicide note as it would be a matter of scrutiny at the time of trial. It is a matter of record that the applicant is in custody from 17.6.2015 and as on today the charge is not framed.

10. It is also a matter of record that when Sony had jumped from

the ventilator of her bathroom, she was noticed by the neighbours. However, they had not identified her. It is not known as to who had sent the message to the police mobile van.

11. The learned counsel for the applicant submits that it is strange that the neighbours had neither identified Sony nor had informed about it to her parents, but had informed the police. She was taken to the Shatabdi Hospital sometime at 2.30 p.m. However, the parents had reached Shatabdi Hospital at about 3.20 p.m. All this would be a matter of scrutiny at the time of trial. As on today, the question is as to whether the applicant is entitled to be enlarged on bail. At the cost of reiteration, it has to be seen that it is not the case of the prosecution that the applicant had in any way facilitated or instigated Sony to commit suicide. The element of abetment is based upon the suicide note written by her after 3 months of the incident.

12. The Hon'ble Apex Court in the case of **Sudhakar and another vs. State of Maharashtra (2000) 6 SCC 671** has observed as follows :-

“ As distinguished from the English law, Section 32 does not require that such a statement should have been made in expectation of death. Statement of the victim who is dead is admissible insofar as it refers to the cause of his death or as to any circumstances of the transaction which resulted in his

death. The words “as to any of the circumstances of the transaction which resulted in his death” appearing in Section 32 must have some proximate relation to the actual occurrence. In other words, the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. Due weight is required to be given to a dying declaration, keeping in view the legal maxim *nemo moriturus praesumitur mentiri* i.e. a man will not meet his maker with a lie in his mouth. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of the statement as a fact. If it is in writing, the scribe must be produced in the court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement.

“Circumstances of the transaction is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in ‘circumstantial evidence’ which includes evidence of all relevant facts. It is on the other hand narrower than ‘res gestae’. Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that ‘the circumstances’ are of the transaction which resulted in the death of the declarant. It is not necessary that there should

be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that 'the cause of (the declarant's) death comes into question'".

13. In the case of **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) AIR 2010 SC 1446**, the Hon'ble Apex Court in para 16 has observed as follows :-

“16. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.”

The observations of the Hon'ble Apex Court in the case cited supra can be relied upon in the present case.

14. In the peculiar facts and circumstances of this case, this Court is of the opinion that the applicant deserves to be enlarged on bail by imposing certain conditions.

15. The observations herein are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or more local solvent sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on first and 3rd Sunday of each month till framing of charge and shall attend all the stipulated dates before the Sessions Court.
- (iv) Upon failure to attend any two consecutive dates, the prosecution will be at liberty to file an application under Section 439(2) of Cr.P.C. seeking cancellation of bail.

The Application stands disposed of.

16. The complainant is present in Court. This Court has given audience to the complainant. At this stage, the complainant has orally

requested the Court to stay the order. However, since it involves the liberty of an individual after granting bail under Section 439 of Cr.P.C., it would not be appropriate to stay the order. The request is rejected.

17. The Intervention application is heard, allowed and disposed of.

(SMT. SADHANA S.JADHAV, J.)