

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 829 OF 2016

Mr. Rahul Kamlakar Dhasade	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Pankaj D. Kavale, Advocate for the applicant.

Ms. J.S. Lohokare, APP, for the State.

Mr. P.J. Choudhari, API, Shahpur Police Station present.

CORAM: SMT. SADHANA S. JADHAV, J.
DATE : 23rd January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 8.5.2015 in Crime No.141 of 2015 registered at Shahpur Police Station. The investigation is completed and charge-sheet is filed against the applicant and others for the offences punishable under Sections 302, 376A, 420, 366, 201 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 2.5.2015, Chetan Dharwane lodged a report at the police station alleging therein that his sister namely Rupali was married. Her matrimonial house was at Village Hedvali. She had come to her maternal house. On 1.5.2015, her brother Chetan was to drop her at her matrimonial house. They had proceeded on a motorcycle.

On the way, she realized that she had forgotten her purse at home and therefore Chetan left her on the road and had been to his house to bring the purse. When he returned, he could not find his sister on the spot. He had searched for his sister in the close vicinity. However, her whereabouts could not be traced. On the basis of his report, Missing Report No.5 of 2015 was registered. On 3.5.2015, the cousin of deceased Rupali was travelling. He saw crowd on the road. Being inquisitive he had been to the spot and there he saw the dead body of a female was floating in the river. He identified the dead body to be that of his cousin Rupali. He lodged a report about the same and on the basis of his report, ADR No.36 of 2015 was registered under Section 174 of Cr.P.C.

The statement of Deepak ie. the person who identified the dead was recorded immediately. He has disclosed to the police that on 2.5.2015 a missing report, was filed. Prior to giving the missing report her purse was searched and they found a cellphone number which appeared to be that of Gorakh Dasade. It is also stated that on the same day, Gorakh Dasade and his associate went near the bus stand and had threatened the complainant and others under the influence of alcohol. He has stated that the said persons have forcibly taken Rupali to Shirdi and had thrown the dead body in the river on the next day. He has also disclosed that in all

probabilities, Rupali was sexually abused by the said persons.

3. On 4.5.2015, the brother of Rupal lodged an FIR at the police station alleging therein that on 2.5.2015, he had enquired with Gorakh and his friends as to whether Rupali was in their company. They had denied the same. According to him, at this stage, Gorakh Dasade and others threatened him, abused him. They had given the cellphone number to the applicant. Since the above number was of Gorakh Dasade, the police had been to the house of Gorakh. He had learnt from the police on 1.5.2015, Rupali had come to Shirdi along with Gorakh, the present applicant (and one of them is an absconding accused). That according to the police, they returned from Shirdi on the next day i.e. on 2.5.2015 and on that day they had seen the dead body of Rupali in the river.

4. The learned counsel for the applicant submits that prior to her marriage with Rajendra Ferde, Rupali was in love with Gorakh Dasade. It is also submitted that the story narrated by the prosecution does not inspire confidence in the sense that on 1.5.2015, in the afternoon, at about 4 p.m., Rupali had gone missing. According to the complainant, on 2.5.2015 he had lodged a report and on 3.5.2015, the dead body was found at Shahpur

which is almost 150 kms. away from Shirdi. It is submitted that the applicant has no concern with the deceased.

5. The learned APP draws the attention of this Court to the register of Vardhaman Guest House. They admit that on 1.5.2015, Room No.306 was allotted to Gorakh Dasade and Room No.304, according to the prosecution was allotted to the present applicant. The investigating agency has recorded statement of the owner of Vardhaman Guest House. On 2.5.2015, he had served Poha and tea to four persons in Room No.306 and according to the owner, the boy and girl were residing in Room No.304. That they had left the room on 2.5.2015. The police had shown him the photograph of the deceased and the accused persons and upon seeing the photographs of the present applicant, he has identified same to be of one person who was staying in Room No.304.

6. The learned counsel for the applicant submits that there is no material to show that the present applicant had played any active role in causing homicidal death of Rupali. According to the learned counsel, he has been arraigned as an accused only because he happens to be the relative of Gorakh Dasade. The medical report shows that the injuries on the person

of the applicant had been sustained at least 48 to 72 hours prior to conducting the post-mortem. The learned counsel for the applicant rightly submits that the dead body was found on 3.5.2015 and even according to the medical evidence, the injuries were sustained 48 to 72 hours prior to her death, whereas injury Nos. 1, 3, 4, 5, 6, 7 and 8 were sustained by Rupali 24 hours prior to her death. The learned counsel rightly submits that the compilation of charge sheet does not clearly indicate the exact time of her death. There is material on record to show that Rupali and Gorakh had intimate relations prior to her marriage with Rajendra Ferde.

7. The learned counsel for the applicant rightly submits that there was no reason for the complainant to enquire with Gorakh and his associates in respect of whereabouts of Rupali. The I.O. had recorded statement of one Rahul Vadak on 5.5.2015. he is working at Vardhman Guest House. According to him, on 1.5.2015, at about 3 p.m., two men and two ladies had been to the Guest House and he had allotted Room Nos. 306 and 304 to them. he has further stated that they had vacated the rooms on 2.5.2015 at 8 a.m. Despite that it is the narration of the first informant that on 1.5.2015 at 3 p.m., Rupali was with the brother as in all probabilities she was at Shirdi at 3 p.m.

8. Taking into consideration the material and the compilation of the charge sheet and the role attributed to the applicant, this Court is of the opinion that the applicant deserves to be enlarged on bail. However, the co-accused Gorak Dasade and the absconding accused Jagruti Jadhav shall not claim parity with the present applicant.

9. The observations herein are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration at the time 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 his furnishing P.R. Bond in the sum of Rs.25,000/- with one or more local sureties in the like amount.
- (iii) The applicant shall report to the Shahpur Police Station on first and third Sunday of each month till framing of charge.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)