

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 220 OF 2018

Navnath @ Vishal Mahadeo Torne. ... Appellant.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. Umesh Mankapure for the Appellant.

Ms. M.M. Deshmukh, APP for the Respondent – State.

***CORAM : S.S. Shinde and
Mrs. Mridula Bhatkar, JJ.***

DATE : 5th October 2018.

P.C. :-

This Appeal is directed against the judgment and order passed by the Additional Sessions Judge, Pandharpur dated 9th January 2018 in Criminal Bail Application No. 601 of 2017.

2. It is the case of the prosecution that the Appellant - accused was having illicit relationship with co-accused, who was a married woman and the mother of the deceased Ganesh. Deceased Ganesh was 14 years old school going boy. He has seen his mother and the Appellant – accused in an intimate position

and therefore the Appellant – accused warned him to keep quiet and threatened him to life. On 2nd September 2017 the co-accused that is the mother of the deceased and her other family members were busy in the funeral of their close relative. At that time, the other co-accused Bhagwantrao Patil called deceased Ganesh to go to his field. In between the Appellant – accused joined co-accused Bhagwantrao Patil and went to the field of Bhagwantrao Patil. Then Bhagwantrao Patil was busy in some agricultural work. The Appellant – accused asked deceased Ganesh that he should keep mum about whatever he had seen. Deceased Ganesh denied to do so and told him that he would inform his father about the illicit relationship of the Appellant- accused and his mother. The Appellant – accused was enraged and assaulted him with iron rod and thereafter, he threw him in the well of Bhagwantrao Patil. Bhagwantrao Patil on his arrival enquired about Ganesh. However, the Appellant – accused pretended ignorance about the whereabouts of the deceased Ganesh. While returning from the field, Bhagwantrao Patil noticed that a bundle of cloths and food wear of deceased Ganesh and therefore he become suspicious and tried to trace Ganesh. He found dead body of Ganesh. He took him out and then informed the police.

3. As the deceased Ganesh was not found, the co-accused Rupali had approached the police and gave information to the police about the incident. Pursuant to which the offence was registered at C.R.No. 658 of 2017 on 3rd September 2017 with

Sangola Police Station, District – Solapur against the Appellant – accused. However, it was subsequently revealed that the mother of the deceased that is the co-accused was involved in the conspiracy to eliminate her own son and therefore, the informant was made accused. The police have also prosecuted Bhagwantrao Patil the another co-accused in whose field the murder was committed and in whose well the dead body of deceased Ganesh was found. The Appellant – accused is arrested immediately i.e. on 9th September 2017. The learned Counsel appearing for the Appellant submits that his Regular Bail Application No. 601 of 2017 was rejected by the Additional Sessions Judge, Pandharpur. Hence, this Appeal.

4. The learned Counsel for the Appellant – accused has submitted that there is no admissible evidence in the present case. The police have filed charge-sheet. The statement of Bhagwantrao Patil was recorded by the police however he being the co-accused in the present case, his evidence is not admissible. Besides that there is no evidence to link the Appellant – accused with the offence of murder of Ganesh. He has submitted that the police has wrongly invoked Section 3(2)(VA) of the Scheduled Caste and Scheduled Tribe Act. As per the charge-sheet the co-accused that is the informant Rupali, the mother of the deceased herself belonged to Scheduled Caste and Scheduled Tribe community and therefore this invocation of the Scheduled Caste and Scheduled Tribe Act is unwarranted.

5. In view of the material placed on record, it is the fit case for bail.

6. The learned APP appearing for the State while opposing this Appeal submits that the murder of Ganesh was committed by the Appellant – accused and the police have seized iron rod at the instance of the Appellant – accused. She has submitted that when body was found, there are antemortem head injury and thereafter, the boy was thrown in the well.

7. We have considered the submissions of the learned Counsel appearing for the Appellant – accused and the learned APP for the State. We have perused the statements and evidence produced before this Court. It is most unfortunate murder of 14 years old boy wherein the mother is involved as a co-accused. Though it is the case of the murder, in the post-mortem report the opinion is not expressed by the Medical Officer but he has mentioned that viscera preserved and opinion reserved. Further, no opinion disclosing the cause of the death is produced before us. There is statement of Bhagwantrao Patil wherein he has stated about the motive and so also about how the murder has taken place, prima-facie according to us he is the best witness of the prosecution in this case but the police have made him an accused. We failed to understand the logic and reason of the Investigating Officer while doing so. Such evidence prima-facie cannot be read

and therefore, we are of the view that it is a case of bail and hence we are inclined to allow this application.

8. We pass the following order :-

(i) The Criminal Appeal is allowed.

(ii) The Appellant – accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- (Fifty Thousand only) with two solvent sureties in the like amount.

(ii) The Applicant – accused shall not tamper with the evidence or pressurize the witnesses.

(iv) The Applicant – accused shall not indulge into any criminal activity.

(v) The Applicant – accused shall furnish his permanent address to the Investigating Officer alongwith documentary proof.

(Mrs. Mridula Bhatkar, J.)

(S.S. Shinde, J.)