

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

CRIMINAL BAIL APPLICATION NO. 2396 OF 2019

Kedu Kashinath Gangurde

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Sumant Deshpande, Advocate for the Applicant.

Smt. A. A. Takalkar, APP for the State/Respondent.

Mr. G. R. Rathod, PSI, Chandwad police station, present.

CORAM :SARANG V. KOTWAL, J.

DATE :26th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 174 of 2018 registered with Chandwad Police Station, Nashik, under sections 304B, 306 and 498A r/w. 34 of the Indian Penal Code. The applicant was arrested on 01/11/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The FIR is lodged on 31/10/2018 by Trambak Wakte, father of the deceased Shakuntala. He has stated in his FIR that,

Shakuntala had got married with the applicant on 12/04/2012. They couple was residing with the applicant's joint family consisting of applicant's uncles and cousins. It is mentioned in the FIR that Shakuntala was treated properly for a period of one year. Thereafter the applicant was not allowed to use a tractor and a motorcycle belonging to the joint family. They were insisting that the applicant should force the deceased to get Rs.2 lakhs from her parents, so that, he could buy a tractor and a motorcycle for his own use. On more serious allegation was that the applicant's cousin Khandu was demanding sexual favours from Shakuntala. Shakuntala, obviously, was disturbed. Five months prior to the date of incident, she came to reside at her parental house. At that time, she had told everything to her parents and had added that the applicant's younger brother Bapu wanted to marry Shakuntala's younger sister Ashwini and on that count Bapu was harassing her. It is further mentioned in the FIR that informant's son Roshan and his friend Santosh Salade went to the applicant's house and told the applicant's family that Khandu was having bad intentions for Shakuntala. The informant has further stated that

his younger brother Sopan had told the applicant, Khandu and Jayram that they were not in a position to get Rs.2 lakhs. On 30/10/2018 Shakuntala called the informant from her mobile phone and told him that she was assaulted by the applicant, Khandu and applicant's uncle Jayram. The informant tried to pacify her, but shortly thereafter at around 3.15p.m. the informant was told telephonically that Shakuntala had committed suicide by hanging herself. On this basis, the FIR was lodged.

3. The Postmortem notes show that the deceased had suffered four other injuries besides ligature mark around the neck. Though, injuries were on the back, right hand, left knee and right thigh, the postmortem notes show that these injuries were antemortem. However, the investigating agency had sought further opinion from the Medical Officer as to whether those injuries were antemortem or postmortem. The cause of death was mentioned as, "Asphyxia due to Hanging. Viscera preserved for chemical analysis." The charge-sheet contains statements of family members of the first informant i.e. his wife, daughters etc. There is a statement of his brother Sopan and the statement of one Santosh

Salde who was friend of informant's son Roshan. All these statements are important in the context of this case.

4. Heard Shri. Sumant Deshpande, learned counsel for the applicant and Smt. A. A. Takalkar, learned APP for the State.

5. Learned counsel for the applicant submitted that, the main allegations are directed against Khandu and Jayram. Both of them are granted bail by this court. The accused Jayram was granted bail by this court (Coram : Shri. A. S. Gadkari, J) vide order dated 20/12/2018 passed in A.B.A.No.3260 of 2018. The other accused Khandu was granted bail by this court (Coram : Shri. P. N. Deshmukh, J.) vide order dated 02/05/2019 passed in Bail Application No.879 of 2019. He submitted that the applicant's role is much lesser than those two accused and, therefore, on the ground of parity, he deserve to be released on bail. He submitted that there are some statements in the chargesheet exonerating the applicant and the allegations are directed only against Jayram and Khandu. He submitted that the applicant is already in custody since 05/11/2018, therefore, he deserves to be released on bail.

6. Learned APP opposed this application and submitted

that the applicant was husband of the deceased and his responsibilities were more than other relatives of the deceased. She submitted that the FIR and other statements of the family members clearly show that the applicant was demanding Rs.2 lakhs from her and he had even assaulted the deceased prior to the incident. She submitted that the theory of assault is supported by postmortem notes.

7. I have considered all these submissions. As rightly pointed out by the learned counsel for the applicant, the role attributed to Jayram and Khandu is more serious than the role attributed to the applicant. Jayram and Khandu were denying the applicant use of their common vehicles and were forcing the applicant, in turn, to force the deceased to get the amount from her parents. The allegations are mainly directed against Khandu that, he was insisting that the deceased should keep illicit physical relations with him and that appears to be main cause of harassment from which she was suffering. The other angle was the desire of applicant's younger brother Bapu to get married with Shakuntala's younger sister. All these factors have led to the

unfortunate incident. The statement of the brother of the informant Sopan shows that, deceased had told him and the first informant that, she was sent to their place by Jayram to bring Rs.2 lakhs. He has not stated that the applicant had asked Shakuntala to get that amount from her parents. Though, there is further general statement that all the family members were calling her telephonically and were demanding Rs.2 lakhs, he has not alleged that the applicant himself had asked either her or other family members of the informant to pay Rs.2 lakhs. His statement further mentions as to how Khandu was harassing her. The statement further narrated that on 30/10/2018 the informant told him that Shakuntala called the informant and was saying that Khandu and Jayram had assaulted her and on their instigation the applicant has also joined in the assault. The other family members had abused her and she was crying. By afternoon, she had committed suicide.

8. Learned counsel for the applicant submitted that this statement, in fact, shows that the applicant was forced by his family members. There is a reference of the applicant's name only

in respect of the date of incident that he had assaulted the deceased. Apart from that, there is no whisper made by Sopan against the applicant as to how he was harassing the deceased at any time before that particular incident.

9. One Santosh Salde has also supported the applicant's theory of innocence because he has stated that he had gone to the house of applicant's family with his friend Roshan. Roshan and Santosh confronted Khandu for his behaviour. At that time, the applicant had tried to pacify all the parties. This conduct of the applicant, in fact, shows that he was trying to settle the issue. Though, there are other statements of family members of the informant narrating the same story, as stated in the FIR, the statements of these two witnesses create sufficient doubt in favour of the applicant. The more important factor which I have considered is grant of bail to the main accused Jayram and Khandu whose role, as pointed out earlier, is much more serious than the role attributed to the applicant. In this view of the matter, on the ground of parity and in view of the discussion above, the applicant deserves to be released on bail.

10. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 174 of 2018 registered with Chandwad Police Station, Nashik, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)