

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.577 OF 2020

DAIWAN S/O. ACHUTRAO LAMB
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.K.R.Doke, Advocate for the appellant.
Mr.S.D.Ghayal, APP for respondent No.1.
Mr.V.B.Garud, Advocate for respondent No.2.(Appointed)

**(CORAM : RAVINDRA V. GHUGE AND
B.U.DEBADWAR, JJ.)**

DATE : 06/11/2020

PER COURT :

1. The learned Prosecutor informs that respondent No.2 has been served with the intimation u/s 15A(3 & 5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and she is present in the Court.
2. Respondent No.2 has expressed a desire for legal assistance as she is a labourer.
3. We are, therefore, appointing Mr.V.B.Garud, learned Advocate to represent respondent No.2. The learned Advocate for the appellant shall forthwith supply a copy of the appeal paper book to

Mr.Garud. The High Court Legal Services Sub-Committee, Aurangabad Bench, Aurangabad shall take note of the said appointment.

4. After we appointed learned Advocate Mr.Garud, he sought for a pass over so as to study the case papers and make his submissions. Considering the urgency expressed by the appellant/accused No.2 who is a senior citizen, we adjourned this matter to be called out at the end of the board.

5. The learned Advocates on behalf of the appellant and respondent No.2 and the learned Prosecutor on behalf of respondent No.1/State, have canvassed their submissions. With their assistance, we have gone through the record available and the police case papers which the learned Prosecutor has made available for our perusal. The learned Advocates have also gone through the police case papers.

6. We find from the record that the missing lady Sunita Suresh Khade, is aged about 42 years and is the younger sister of the first informant Smt.Sangita Babarao Galphade, aged about 45 years. Both the sisters are married. Both of them have been deserted by

their respective husbands for the last more than a decade and they are residing together with their mother Fulabai at Siddhartha Nagar, Tal.Kaij, Dist. Beed.

7. Accused No.1 Sitaram s/o Daiwan Lamb (accused no.2 and present appellant), operates as a Mukadam for taking contracts of sugarcane harvesting from sugarcane agriculturists. It is admitted that for the last 4 years, he has been taking the victim Sunita for sugarcane harvesting in the State of Karnataka. The last trip of Karnataka undertaken by Sitaram and Sunita was in the harvesting season of 2019. Since both of them did not return for many weeks, the mother Fulabai filed a missing complaint with the concerned police station on 29/07/2020 which indicates that the victim was missing from 11/09/2019 and the complaint has been lodged after 10 months.

8. It is an admitted position that Sitaram had purchased an additional sim card and a mobile phone which he handed over to Sunita. Sunita did not share the said number even with the first informant Sangita. She used to utilize the said phone and sim card only for talking with Sitaram. It is the case of Sangita that Sunita has been travelling with Sitaram for sugarcane harvesting for 4

years and she developed illicit relations with him. She used to travel with Sitaram voluntarily and consentingly. The first informant Sangita had contacted the present appellant/accused No.2 Daiwan, prior to the lodging of the FIR, for enquiring about Sitaram and Sunita. Daiwan himself tried to contact Sitaram and could not establish any contact. He, therefore, informed Sangita that the cell phone of Sitaram is switched off and he is unable to contact him.

9. We find from the above story set out in the FIR and from the concluding part of the FIR, that there is no allegation against Daiwan as having compromised the safety of Sunita. What has been alleged is that Sitaram is having illicit relations with Sunita and in order to kill her, he had taken her to Karnataka on the pretext of sugarcane harvesting in the season of 2019 and she is missing since Sept. 2019.

10. The learned counsel for respondent No.2/original informant has strenuously contended that the custodial interrogation of Daiwan is necessary in view of the fact that Sitaram has been arrested on 07/09/2020, the day on which the FIR was registered. However, the Investigating agency has still not been able to trace

out Sunita and it appears that Sitaram is not co-operating in the investigation. The learned Prosecutor also has vehemently opposed this appeal for the same reasons and has submitted that the Investigating Authorities hope to derive some information from Daiwan so as to solve the mystery of the missing victim.

11. We are of the view that custodial interrogation of an accused is necessary if there are certain attributes to his conduct and it is noticed, prima facie, that he has played a key role in the commission of the offence. The custodial interrogation would be necessary to investigate into the crime committed and if the accused would be in a position to divulge some information into such investigation. In the present case, we find that the appellant Daiwan is a senior citizen and is a petty agriculturist. He resides at Chinchpur, Tal.Dharur. His son is in the mid forties, is a married person and independently conducts his business of being a Mukadam for performing sugarcane harvesting. There are no attributes against Daiwan and we find that he had tried to contact his son when he was approached by the first informant and as he could not develop any contact, he had plainly informed the first informant that he is helpless. The belief of the first informant is that he is dodging her questions. In these circumstances, we find

that the custodial interrogation of the appellant is not necessary.

12. In view of the above, this appeal is allowed. The impugned order dated 22/10/2020, passed by the learned Additional Sessions Judge, Ambejogai rejecting the appellant's Misc.Criminal Bail Application No.443/2020, is quashed and set aside. The application for seeking anticipatory bail in FIR No.357/2020 is allowed under the following conditions :-

[a] In the event of arrest of the appellant, he shall be released on bail on furnishing a PR bond of Rs.15,000/- (Rs.Fifteen thousand only) with one surety of the like amount.

[b] He shall report to the Kaij Police Station on every Tuesday and Friday between 11.00 a.m. and 2.00 p.m., till the charge sheet is filed before the Trial Court.

[c] His attendance shall be marked in the Station Diary by the Station House Officer. His signature would be obtained for marking his presence. He shall fully co-operate in the investigation being conducted by the S.D.P.O. Kaij and shall make himself available as and when directed by the S.D.P.O.

[d] He shall not contact the first informant or any such person who is likely to be a witness in the case.

[e] Violation of any of the bail conditions would be a good ground

for cancellation of bail.

13. Since we have appointed Mr.Garud to represent respondent No.2 through the High Court Legal Services Sub-Committee, Aurangabad Bench, Aurangabad, his fees are quantified at Rs.5,000/- (Rs.Five thousand only).

(B.U.DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)