

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

963 CRIMINAL APPEAL NO.230 OF 2021

RAMBHAU @ RAM GORAKHNATH WAGHULE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr N.S. Ghanekar
APP for Respondent No. 1: Mr Shashibhushan P. Deshmukh
Advocate for Respondent No. 2 : Mr N.B. Narwade (appointed)

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 6th AUGUST, 2021

PER COURT :

1. The appellant is seeking regular bail in connection with Crime No. 0462/2020 registered with Kannad City Police Station, Dist. Aurangabad for the offence punishable under Sections 306, 376 of IPC and 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989. His application with the similar prayer came to be rejected by the Special Court by order dated 30.03.2021 passed below Exh.4 in Special Case No. 94/2021. The appellant has preferred this appeal in terms of the provisions of Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The learned counsel for the appellant submits that the charge sheet has been submitted on 25th February, 2021. The appellant came to

be arrested in connection with the present crime on 30th December, 2020. The learned counsel submits that on the basis of the complaint dated 29.12.2020 lodged by the aunt of the deceased, the aforesaid crime No. 0462 of 2020 for the offence punishable under Section 306 of IPC and under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 came to be registered initially.

3. The learned counsel further submits that as per the statement of the Manager and the Attendant of the Ramkrushna Mahal at Kannad, the deceased along with the appellant had been to the said hotel and in the evening time, the appellant had left that hotel and on the next day in the morning, the dead body of the deceased was found in hanging condition to the fan. She had committed suicide in the said room of the hotel. The learned counsel submits that there is no evidence at all about the abetment of the commission of suicide. The learned counsel submits that so far as the charge under Section 376 of IPC is concerned, the concerned Medical Officer, who has conducted the post mortem examination, had answered to the query made by the Investigating Officer that it is not possible to say as to whether the deceased was subjected to intercourse.

4. The learned counsel submits that as per the allegations made in the complaint, the appellant and the deceased fell in love with each other. It has been alleged in the complaint that since the appellant had failed to fulfill the promise of marriage, the deceased has committed suicide. The learned counsel submits that except the bare words of the

Aunt of the deceased, there is no evidence about it. On the other hand, in terms of the observations made in the spot panchanama, the deceased and appellant had celebrated some occasion in the room of the hotel and a day before, when the deceased was alone in the room, she has self-inflicted injury (which is recorded in column No. 17 of the p.m. report) and written on the wall and also on the mirror of the dressing table the word 'sorry' with her blood. The learned counsel submits that *prima facie*, it indicates the case of self-immolation for which the appellant is not responsible. There are no antecedents. There is no question of tampering with the prosecution evidence. The appellant may be released on bail.

5. The learned A.P.P. submits that *prima facie*, there is a strong case against the appellant. Though he has promised to marry with the deceased and established the relations with her, failed to perform his promise of marriage. The deceased had committed suicide and this fact is sufficient to draw the inference about the abetment of her commission of suicide by the appellant-accused. The learned A.P.P. submits that there is sufficient evidence against the appellant. The Special Court has rightly rejected the application.

6. The learned counsel for respondent No. 2 submits that the death of the deceased occurred otherwise than under the normal circumstances in the room of the hotel. The learned counsel submits that the deceased along with the appellant was frequently visiting the said hotel.

7. The learned counsel submits that there is sufficient evidence about the abetment of commission of suicide even though the Medical Officer, who has conducted post mortem examination, has given the answer to the query. However, he has further reserved his opinion because the swabs were taken from the vagina and sent for chemical analysis.

8. We have carefully gone through the entire charge sheet particularly, the contents of the complaint. It appears that the deceased was residing with her grandmother since she was 7/8 years of age.

9. We have perused the statement of the grandmother namely, Malti, however, she has not made any allegations against the appellant. It further appears that the Aunt of the deceased has made certain allegations in the complaint against the appellant. It further appears from the allegations made in the complaint and also from the statement of the witnesses that there was love affair between the appellant and the deceased. It further appears that the deceased had occupied the said room of the hotel for the reason that there was some quarrel between her and her family member. We have carefully gone through the contents of the spot panchanama and the post mortem report. In column No. 17 of the post mortem report, there is a reference of the self-inflicted injury over the forearm. It is also noted in the spot panchanama that the word 'sorry' has been written on the wall and also on the mirror of the dressing table with her blood. Further, the articles found in the said room, which came to be seized under the spot panchanama indicate that there was celebration of

some occasion by cutting a cake. Except the allegations made by the aunt of the deceased, there is no evidence that the appellant has failed to perform his promise of marriage. The appellant is still unmarried as informed to us by the learned counsel for the appellant.

10. Except the allegations made in the complaint, there is not a single witness stating that the appellant has failed to perform his promise of marriage. Thus, prima facie, we hardly find any evidence about the abetment of commission of suicide. So far as the charge under Section 376 of IPC is concerned, the deceased was a major girl. It appears that there were consensual relations between herself and the appellant. Furthermore, the Medical Officer, who has conducted the post mortem examination, is not in a position to state as to whether the intercourse or forceable intercourse has been committed in terms of the findings recorded in the post mortem report. There are no antecedents. Considering the entire aspects of the case, as the charge under Section 306 of IPC has been levelled against the accused along with Section 376 of IPC for which there is no evidence forthcoming, we are inclined to release the appellant on bail with certain conditions. Hence the following order :-

ORDER

- (i) Criminal Appeal is hereby allowed.
- (ii) The appellant - Rambhau @ Ram s/o Gorakhnath Waghule in connection with Crime No. 0462/2020 registered with Kannad City Police Station, Dist. Aurangabad for the offence punishable under Sections 306,

376 of IPC and 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 be released on bail on furnishing Personal Bond of Rs.20,000/- (Rupees Twenty Thousand Only) with one solvent surety in the like amount on the condition that the appellant shall not tamper the prosecution evidence in any manner.

11. We quantify the legal fees of the Counsel appointed for respondent no.2 at Rs.3,000/- (Rupees Three thousand only) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

12. Criminal Appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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