

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 CRIMINAL APPEAL NO. 364 OF 2021

RADHA W/O DIGAMBAR MORE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Ms. Naheen Yousufjai
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Mr. M. S. Bhosale

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 20th SEPTEMBER, 2021**

PER COURT:-

1. The appellant is seeking regular bail in connection with crime no. 607 of 2020 registered with Nanalpeth Police Station, Parbhani for the offence punishable under Sections 302, 201, 120-B, 143, 147, 148, 149 of IPC and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Her application with similar prayer came to be rejected by the Special Judge and Additional Sessions Judge, Parbhani by order dated 24.05.2021 passed below Exhibit 5 in Special (Atrocity) Case No. 1 of 2021. The appellant-accused 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. Learned counsel for the appellant-accused submits that the appellant is in jail in connection with this crime since 10.10.2020. The investigation is already over and the charge sheet has been submitted before the Court. Learned counsel submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel has pointed out that it is the case of the prosecution that original accused no.1 Santosh, who happened to be a police constable, has hatched the conspiracy and the other accused persons, including the appellant, assisted him in execution of that conspiracy. In consequence of the said conspiracy, all the accused persons and the appellant allegedly committed murder of deceased Ramabai. Learned counsel submits that on the basis of the statement of accused no. 1 recorded while drawing memorandum panchanama under Section 27 of the Evidence Act, the appellant is arrested in connection with the crime and since then she is in jail. Learned counsel submits that the said statement given by the co-accused while drawing memorandum panchanama under Section 27 of the Evidence Act is not admissible in evidence. Learned counsel submits that in terms of the prosecution story, the role has been attributed to the appellant to the effect that she had injected

diazepam drug to deceased Ramabai and in consequence thereof, she suffered giddiness. Learned counsel submits that the appellant-accused is neither a nurse nor a trained person to inject medicine in human body in any manner. The appellant-accused was serving as a sweeper in one hospital of Dr. Deshmukh and it is not clear as to whether she had any knowledge about it. Learned counsel submits that even in the C.A. report, which is now shown by the learned APP, nothing has been revealed to indicate that before death, deceased Ramabai was given the injection of diazepam. Learned counsel has pointed out that the cause of death is 'terminal cardio-respiratory arrest due to internal hemorrhage due to head injury' as opined by the medical officer who has conducted the postmortem examination. There are no antecedents. The appellant is belonging to the caste 'Gopal' which falls under the Scheduled Tribe category and therefore, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are not attracted against her. Learned counsel thus submits that the appellant-accused may be released on bail.

3. Learned counsel for respondent no.2 submits that accused no. 1 Santosh, who happened to be a police constable, had illicit

sexual relations with deceased Ramabai. The said co-accused Santosh had purchased one insurance policy worth of Rs.20,00,000/- in the name of deceased Ramabai and though she had two children, shown himself as the nominee in the said insurance policy. In order to get the policy amount, said co-accused Santosh hatched the conspiracy with the help of the other accused persons, including the appellant, and made a scene of accidental death of deceased Ramabai. Learned counsel for respondent no.2 submits that deceased Ramabai was initially given the injection diazepam and thereafter she was thrown on the road and tried to be crushed below the wheels of an auto rickshaw and even thereafter, since she could not take her last breath, co-accused Santosh had given blows of stone on the occipital region of her head three times. Learned counsel submits that deceased Ramabai was brutally murdered. The appeal is liable to be dismissed.

4. Learned APP submits that *prima facie* there is strong evidence against the appellant. There are statements of two witnesses Govind Bharat Mhaske and Ratneshwar Rohidas Kendalkar before whom co-accused Manoj had made the extra-judicial confession to the effect that all the accused persons,

including the appellant, have committed murder of deceased Ramabai. Even in his said extra-judicial confession, there is reference of injecting something to deceased Ramabai. Learned APP submits that the statement of co-accused Santosh recorded while drawing memorandum panchanama under Section 27 of the Evidence Act, certain facts are mentioned in the said memorandum and in terms of the said disclosure statement at the instance of accused Santosh, an empty glass ampule and one syringe are recovered. Learned APP submits that the said statement can be considered at this stage and it is for the trial court to appreciate the said statement during trial. Prima facie, there is strong evidence against the appellant. She may not be released on bail.

5. We have carefully gone through the charge-sheet. It appears that the prosecution case entirely rests upon circumstantial evidence. As per the prosecution story, co-accused Santosh hatched the conspiracy. He had developed illicit sexual relations with deceased Ramabai. He had purchased one insurance policy in the name of deceased Ramabai wherein he had shown his name as nominee though deceased Ramabai had two children. The said insurance policy was worth of Rs.20,00,000/-. Co-accused Santosh

had thus committed murder of deceased Ramabai with the help of other co-accused persons and the appellant-accused in execution of the said conspiracy. It further appears from the prosecution story that the accused persons prepared a scene of accidental death of deceased Ramabai.

6. So far as the appellant-accused is concerned, it has been allegedly revealed during investigation that the appellant-accused had injected diazepam drug to deceased Ramabai and deceased Ramabai got giddiness. She was thereafter thrown on the road and tried to be crushed below the wheels of the auto rickshaw. Even thereafter, co-accused Santosh had given blows of stone on her head. It has been merely revealed in the investigation that the appellant-accused was serving as a sweeper in one hospital of Dr. Deshmukh. There is no further connecting evidence to indicate that the appellant-accused had knowledge of injecting drugs or that she had received any training for the same. Except the statement of co-accused Santosh in his disclosure statement recorded while drawing panchanama under Section 27 of the Evidence Act, which is hardly admissible in evidence, there is no other evidence against the appellant-accused to connect her with the alleged crime.

Furthermore, the C.A. report is also in the negative and on chemical testing nothing has been revealed in exhibits 1 to 5, which include the empty glass ampule, diazepam injection in pocket etc.

7. So far as the two statements referred by learned APP are concerned, we have carefully gone through the statements of those two witnesses, namely, Govind Mhaske and Ratneshwar Kendalkar. It appears that co-accused Manoj had made the extra-judicial confession before them when they sat for liquor party. However, in the said so-called extra-judicial confession, there is only a reference of one unknown woman and even co-accused Manoj has also not named the appellant-accused. Furthermore, those two witnesses, namely, Govind and Ratneshwar have no first-hand information about the crime and their statements came to be recorded only on the basis of the confession heard by them from co-accused Manoj.

8. In view of the above, considering the role attributed to the appellant and further, the nature of evidence against the appellant, we are inclined to release her on bail. Furthermore, the appellant is a woman languished in jail in connection with the present crime

since 10.10.2020. There are no antecedents. Hence, we proceed to pass the following order:

ORDER

- I. The Criminal Appeal is hereby allowed.
- II. The appellant-accused RADHA W/O. DIGAMBAR MORE in connection with crime no. 607 of 2020 (Spl. Atro. Case No. 1/2021) for the offence punishable under Sections 302, 201, 120-B, 143, 147, 148, 149 of IPC and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on bail on furnishing P.B. of Rs.25,000/- with one solvent surety in the like amount.
- III. The Criminal Appeal is accordingly disposed off.
- IV. We quantify the fees for the appointed counsel Mr. M. S. Bhosale at Rs.2,000/- (Rupees Two Thousand only) to be paid by the High Court Legal Services, Sub-committee, Aurangabad.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)