

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 BAIL APPLICATION NO.1186 OF 2021

SHUBHAM SHIVAJI RATHOD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. P.P. Dawalkar, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07th DECEMBER, 2021

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Present applicant came to be arrested in connection with Crime No.105/2019 registered on 10.07.2019 with Shanishingnapur Police Station, Tq. Newasa, Dist. Ahmednagar for the offence punishable under Section 302, 307, 323, 504, 506 of the Indian Penal Code, 1860.

3 After taking this Court through the prosecution case, it has been submitted that the applicant is the husband of the deceased and it can be

seen that the informant is the hearsay witness. Initially the offence was registered under Section 307 of the Indian Penal Code, however, the deceased succumbed to injuries on 12.07.2019 and, therefore, Section 302 of the Indian Penal Code came to be added. The incident had taken place at about 8.00 p.m. and there is no eye witness. The intimation, that was given by City Care Hospital to Police Station, states that deceased had fall in the house and had received the injuries. There is delay of three days. The applicant has been falsely implicated. He is claiming bail on medical ground also, as the reports those have been called clearly disclose that he is diagnosed with sub mucous fibrosis. The applicant is unable to open his mouth properly since last 3-4 years and it has been certified in view of earlier order passed by this Court that the treatment is not available in Civil Hospital. Learned Advocate for the applicant, therefore, prayed for releasing the applicant on bail.

4 Per contra, the learned APP strongly opposed the application and submitted that the incident had occurred at 8.00 p.m. and it is specifically stated that the deceased had received injury to her forehead and head. She was beaten by applicant by kicks and fists and thereafter the stone roller on her face. The incident has occurred inside the house and, therefore, it amounts to custodial death. After the deceased had become unconscious,

accused had changed his clothes and he ran away. The contents of the Postmortem report would show that there were in all 12 surface injuries and cause of death has been given as head injury. The part of the body which receives the injury would indicate that it could not have been caused due to accidental slip.

5 At the outset, it is to be noted that when the applicant is claiming bail on medical ground, then preference has to be given to the same. The earlier record would show that applicant is suffering from trismus and he was given treatment in Prison Hospital on IPD basis as well as was taken to Civil Hospital, Nashik and then recently he has been referred to J.J. Hospital, Mumbai. The earlier report given by Chief Medical Officer, Nashik Road, Nashik Central Prison dated 22.10.2021 would show that since the applicant was having history of chewing Gutkha, he was making complaints about difficulty in mouth opening with buccal mucosa. He was given treatment, at that time, regular diet has been given to him. But thereafter on 25.11.2011 another report has been submitted that the applicant has been diagnosed with sub mucous fibrosis and it appears that he has been suggested surgery. It is then stated that for operative treatment he has been referred to J.J. Hospital, Mumbai, but that treatment is not available at Civil Hospital, Nashik. It is also then stated that general condition is average related to

disease. Under such circumstances, it would be appropriate to grant bail to the present applicant for a limited period, that is, for medical treatment and he can then get the treatment from hospital of his choice. Therefore, on humanitarian ground, on the ground of illness of the applicant, the application stands partly allowed. Hence, following order.

ORDER

1 Application stands partly allowed.

2 Applicant Shubham Shivaji Rathod, who has been arrested in connection with Crime No.105/2019 registered on 10.07.2019, with Shanishingnapur Police Station, Tq. Newasa, Dist. Ahmednagar, for the offence punishable under Section 302, 307, 323, 504, 506 of the Indian Penal Code, 1860, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The bail is granted to the applicant for a period of three months i.e. till 07.03.2022 and depending upon the treatment taken it may be extended, however, for that purpose the applicant should produce all the medical papers of the treatment, he has undergone and then liberty is

granted to the applicant to make fresh application to this Court.

4 During the period of bail the applicant shall not tamper with the evidence of the prosecution nor shall indulge in any criminal activity.

5 He shall give his mobile number to the Investigating Officer as well as in the Court of Additional Sessions Judge, Newasa, where his case is pending.

6 He should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before committal Court.

(Smt. Vibha Kankanwadi, J.)

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