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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 422 OF 2021

Nilesh Madhukar Chaudhary ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Gulabrao Awasrmol i/b Anand Awasarmol, for the Applicant.

Ms. P. N. Dabholkar, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 18th November, 2021.
PRONOUNCED ON : 29th November, 2021.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 161 of 2018 registered with Chawani Police Station, Malegaon, District-Nashik for the offences punishable under Sections 302, 328, 201 r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that the informant, who is a Police sub-Inspector attached to Chawani Police Station was on duty on 02/10/2018. The informant received a phone call from Police Control

Room that a girl, aged 17 years died under suspicious circumstances near New Vasti, Mahajan Tent House and her relatives are in a hurry to perform funeral. Accordingly, the informant along with staff members reached there. He tried to persuade the relatives that after the postmortem of the dead body the funeral can be performed but the relatives were not in a mood to listen and told that their daughter died due to heart attack. However, after much persuasion and with the help of other police personnel the relatives were persuaded. Finally A.D. No. 32/2018 under Section 174 of Criminal Procedure Code ('Cr.P.C.' for short) was registered with Chawani Police Station. Inquest panchanama was prepared and thereafter an autopsy was done over the dead body. The Autopsy Surgeon provisionally opined that the death was caused due to cardio respiratory arrest due to spinal cord injury due to the atlanto-occipital joint. The viscera was, however, preserved.

3 The prosecution alleges that during the course of investigation it revealed that the deceased girl was in love with one Om Dattatraya Chinchole, resident of Malegaon. The parents were unhappy and many a time tried to persuade the deceased but the deceased was not in a mood to listen. Ultimately, the parents with the help of applicant, who is cousin of the deceased, administered the slipping pills and killed the

deceased. The informant accordingly lodged the report.

4 Mr. Awasarmol, learned Counsel for the applicant, submits that it is only on the basis of confessional statement of co-accused, namely, father of the deceased the present applicant has been roped in. There is no other evidence to show the involvement of the accused in the alleged offence. The entire case is based on circumstantial evidence. Charge-sheet has been filed. The applicant is only 22 years old having no criminal antecedents. In such circumstances, the continuation of the applicant in custody would jeopardize his life. Hence, he be released on bail, urged learned Counsel.

5 Ms. Dabholkar, learned APP, on the other hand, invited my attention to the contents of FIR, inquest panchanama and postmortem report. According to learned APP, since the deceased was not listening her parents and was madly in love with Om Dattatray Chinchole, the applicant in collusion with the parents of the deceased killed the deceased. There being sufficient evidence on record. His application does not deserve consideration.

6 Perused investigation papers including the FIR. From the record it

may be noted that the earlier A.D.No.32/2018 under Section 174 of Cr.P.C. was recorded, however, during the course of investigation it revealed that the present applicant with the help of parents of the deceased committed the murder of the deceased. In the present case the informant is none other than Police Sub-Inspector, who during the course of enquiry in said ADR came to know from informant that the deceased was having love affair with boy Om Chinchole, however, this relationship was not liked by her parents. The deceased was even beaten by her parents but even then she was not ready to leave said Om Chinchole. It further appears from the FIR that the informant during the enquiry of said ADR took the father of deceased in confidence and then the father of deceased spilled beans and revealed that with the help of applicant he and his wife killed his own daughter.

7 Suffice it to say the present applicant came to be arraigned as accused only on the basis of so called confessional statement given by none other than the father of the deceased, who himself had also participated in the crime and thus is one of the accused. The so called confessional statement that too given by the father of the deceased before the Police Officer is questionable and is not admissible in the eyes of law. Section 25 of the Indian Evidence Act is very much clear. It is

settled principle of law that the statement made by accused before the Police Official which amount to confession is barred under Section 25 of the Indian Evidence Act.

8 Except above, there is nothing on record to enable me to conclude that the applicant indeed is responsible and caused the death of the deceased. It is also not the case of prosecution that at the time of incident the applicant was also residing in the same house wherein the death in question occurred.

9 For the aforesaid reasons and the fact that no criminal antecedents are forthcoming, in my considered opinion, it is not desirable to keep the applicant, who is only 22 years old, behind the bars as the completion of trial may take its own time. Hence, the the following order.

ORDER

(i) Applicant- Nilesh Madhukar Chaudhary shall be released on bail in C.R.No. 161 of 2018 registered with Chawani Police Station, Malegaon, District-Nashik on his executing P. R. bond in the sum of Rs.25,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and

shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Bail before the trial Court.

(v) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)