

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.276 OF 2021

Sau. Madhuri Badrinarayan Gote (In Jail)

..vs..

State of Maharashtra, thr. P.S.O.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D.G. Dhoble, Advocate for Applicant.

Shri S.A. Ashirgade, Add. P.P. for non-applicant/State.

Shri S.V. Sirpurkar, Advocate for complainant (Assist to
prosecution).

CORAM : **VINAY JOSHI, J.**
CLOSED FOR ORDER : **16/06/2021**
DATE OF PRONOUNCEMENT : **18/06/2021**

Hearing was conducted through Video
Conferencing.

2. Normally, the Courts are comparatively lenient to the female accused as compared with male while dealing with entitlement for bail. However, the facts of the case, persuades to carve out an exception to the normal trend. The applicant/accused-lady came to be arrested on 13.09.2020 for committing murder of the victim girl aged 15 years, who was her relative. On the basis of report dated 20.01.2020 lodged by one Sandip Jadhav, regarding missing of a minor girl, the Police have initially registered the Crime No.23 of 2020 for the offence punishable under Section 363 of the Indian Penal Code against an unknown person.

For months together, there was no clue which has caused kin of victim to approach this Court by way of Criminal Writ Petition No.199 of 2020, seeking directions to the Police to thoroughly investigate the matter. The Division Bench of this Court has monitored the investigation, and ultimately, the applicant and her husband came to be arrested in the said crime on 13.09.2020 and 14.09.2020 respectively.

3. It is the case of the prosecution that the informant's elder brother Vijay was having a daughter aged 15 years (victim). At the relevant time, victim's father Vijay had gone to the State of Gujarat along with his wife for medical treatment. On 19.01.2020, around 5.00 PM, the informant had seen that his niece (victim) went somewhere, but did not return. Since the victim did not returned till the late evening, missing report was filed. The investigation was initially carried in the direction of kidnapping of a minor girl. The Investigating Officer carried out Spot Panchanama and circulated the report to other Police Stations. On thorough investigation, the Police have zeroed down on the applicant and her husband which led their arrest. During the course of investigation, mobile hand set of Samsung company was seized from the applicant/accused. It was revealed that the applicant along with her husband had kidnapped the minor girl out of revenge as well as for extorting

ransom from her father.

4. It is the prosecution case that, during the investigation, the applicant had confessed that she took away the victim girl, administered some medicines through cold drink to make her unconscious. The applicant along with her husband had strangled the victim with the aid of scarf. Both of them took the body at secluded place, burnt in the streamlet. Thereafter, the accused again visited the spot, collected unburned cavity, half burnt pieces of bones and thrown it into the near-by Well. During the course of investigation, at the instance of the applicant and her husband, the Police seized several articles from the place of the occurrence i.e. half burnt pieces of bones, ash, button, burned wooden pieces, etc. The Car owned by the applicant and her husband was seized, from which hairs came to be seized. The statements of witnesses who have last seen the victim in the company of the accused, were recorded. The samples were sent for chemical analyzation . The articles like spectacles, chappal of victim were seized at the instance of the couple. Precisely, it is the prosecution case that the applicant along with her husband has committed pre-planned murder of victim girl aged 15 years.

5. Learned Counsel for the applicant while claiming bail primely canvassed that absolutely there

is no convincing material against the applicant. According to him, on mere suspicion, the victim has been belatedly, implicated in the case. He has pointed towards D.N.A. report indicating that the half burnt pieces of bones seized at the instance of the applicant, does not matches on test. Equally, he has shown D.N.A. report regarding seized hair, which is also in the negative. It is argued that the evidence collected on the point of last seen, is far fetching and not trace from suspicion. Except pieces of bones, nothing has been seized at the instance of the applicant. It is contended that, during intergenium period, the applicant was thoroughly interrogated, however, no fruitful purpose was served.

6. With the assistance of both sides, I have perused the charge-sheet, which runs into some hundred pages. On 19.01.2020, the victim girl went missing, of which there was no trace for few months. Indulgence of this Court in Writ Petition has yielded into through investigation of the matter by the Police. The traces of victim were found after few months from the occurrence i.e. on 13.09.2020 through the memorandum of the applicant recorded by the Police. The applicant has expressed her willingness to show the place as to where they have strangulated the victim girl, burnt her body and concealed the mobile handset of the deceased. At the instance of the applicant's husband, spect's, pair of chappal of the

deceased was seized, which were identified by her parents.

7. During the course of investigation, at the instance of the co-accused(husband), the Police have seized several pieces of human bones and notably, the said place was in-proximity to the place, which was shown by the applicant as the scene of crime. The D.N.A. report matches to some extent, however, as regards to seizure from the applicant, they did not match. It is to be taken into account that after 8 months from the occurrence, the bones, that too in burnt condition, were seized. Moreover, they were found to be human bones, which assume significance.

8. Besides that there are statement of witnesses who have last seen the victim in the company of the accused. The statement of the witness Dnyaneshwar and others shows that on crucial day in the evening, they have seen that the applicant had been to the house of the victim, whose parents were away at that time.

9. Disclosure statement of the applicant dated 13.09.2020 leads to show that the applicant has specifically showed the place where the victim was burned. The Police on examination, found small burnt pieces of bones, ash mixed with earth and half burned wooden pieces, which came to be seized under

Panchanama.

10. Learned A.P.P. has stressed on the point that the applicant and her husband has mislead the investigation in a pre-planned manner. He has produced a copy of C.D.R. to show that on the date of incident, i.e. on 19.01.2020, the applicant and her husband in a calculated manner kept their mobile phones in their house at Amravati, so as to escape from revealing their location on the spot. The said report shows that on 19.01.2020, from 8.37 AM to 12.00 mid night, though mobile was on, but it was not used. Certainly, the said circumstance can be used in both ways, but it supports the prosecution contention that in a well calculated manner, the plan was designed and executed.

11. It is a case of brutal murder of a innocent girl aged 15 years, that too without any fault on her part. The victim a minor girl, was taken to a distant place of isolation, strangled and her body was burnt into ashes. The entire endeavour was the screen the offence by not leaving any traces of the crime at all. No doubt, it is a difficult task for the investigating agency to collect the incriminating material. However, they do did their job in an possible manner. This case is totally based on circumstantial evidence. It is a settled law that, in like cases, the prosecution has to complete the chain of all circumstances and missing of a single link

would be beneficial to the accused. In such cases, if, the accused succeeds in tampering the evidence by breaking either of the link, then it would be fatal to the prosecution. Therefore, utmost precaution has to be taken while considering the cases which are having peculiar facts like this case. It is informed by learned A.P.P. that Trial Court has framed the charges.

12. Having regard to all the above circumstances, brutality of the crime, calculated designed plan and the severity of the punishment, the applicant does not deserve for exercising any judicial discretion in her favour. In other words, the applicant is not entitled to be enlarged on bail. Hence, the Criminal Application is rejected.

JUDGE

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