

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.80 OF 2022

ABID PAPABHAI MOMIN SHAIKH @ MUNNA SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Ms. S. G. Sonawane, Advocate for applicant.
Mr. B. V. Virdhe, APP for respondent No.1 – State.
Mr. A. T. Jadhavar, Advocate for respondent No.2.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 27.04.2022

Pronounced on : 06.05.2022

ORDER :-

1. Applicant has been arrested on 28.10.2021 in connection with Crime No.802 of 2021 registered with Kotwali Police Station, Dist. Ahmednagar for the offences punishable under Sections 305, 341, 506, 354-D of Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the “POCSO Act”). He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Ms. S. G. Sonawane for the applicant, learned APP Mr. B. V. Virdhe for respondent No.1 and learned Advocate Mr. A. T. Jadhavar for respondent No.2.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. There is no direct, indirect or circumstantial evidence against the applicant in order to connect him with the crime. The allegations are that the applicant had snapped photographs and had threatened the prosecutrix. These allegations are vague and omnibus. They cannot be taken as acts either to instigate or abet the commission of the suicide of minor. The CDR of the mobile phone of the applicant as well as the deceased would show that the deceased used to call the applicant and outgoing calls of the applicant to the deceased are very rare. Since he is also resident of the same locality, they were knowing each other. That cannot be doubted in any other manner. It has been alleged in the FIR that due to the harassment committed by the applicant on the deceased, she has consumed poison, however, at no earlier point of time, there appears to be any disclosure by the deceased to her parents about the alleged act of the applicant. There is inordinate delay of 7 days in lodging the report. Now, the investigation is complete and charge-sheet is also filed. Therefore, the further physical custody of the applicant is not required for the purpose of investigation. The applicant is ready to abide by the terms of the bail.

4. Reliance has been placed by the learned Advocate for the applicant on the decision in ***GEO Varghese Vs. The State of Rajasthan***

and another, [Criminal Appeal No.1164 of 2021] decided by Hon'ble Apex Court on 05.10.2021, wherein reliance was placed on the decision in *M. Arjunan Vs. State, Represented by its Inspector of Police, [(2019) 3 SCC 315]*, wherein it has been held :-

“The essential ingredients of the offence under Section 306 of I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.”

Thereby, the learned Advocate for the applicant submitted that ingredients of the offences, in which the applicant has been arrested, are not made out from the facts of the case as well as documents on record.

5. Per contra, the learned APP strongly objected the application and submitted that the probable cause of death of the deceased has been shown in postmortem report as “clinical and postmortem findings are consistent with that of death due to poisoning, however, viscera is

preserved for chemical analysis.” The deceased was aged 15. The innocence on the part of the girl is therefore required to be considered. It can also be seen that the husband of the informant - father of the deceased runs a hair cutting salon and the mother – informant works as maid servant. The poor financial condition of the informant’s family can be considered from this. Under such circumstance, there would be certain facts which deceased might not have been disclosed with the parents at any earlier point of time. The informant says that when she returned at about 7.30 p.m. on 20.10.2021, the deceased prepared tea for her, but then at about 11.30 p.m., deceased told her that she is getting giddiness and there is numbness in her body. Informant took deceased along with her husband and sister-in-law to Deshpande Hospital and while on journey, they asked as to what has happened, then she told that she has much stress/harassment and, therefore, she has consumed poison. It was then stated that they asked that as to why she has consumed poison, then she told that she was introduced with the accused by lady residing in their neighbourhood about a year ago. Thereafter, they were talking with each other since last year and he has taken photographs while they were talking. He had then started to demand consent for marriage and on that count he was then harassing her and also giving threat that if she does not get marry him, he would

kill her parents and, therefore, she has consumed the poison. The deceased was not got admitted with Deshpande Hospital and, therefore, they took her to Dr. Jadhav's Hospital, Ahmednagar. However, the hospital charges were not affordable to them and, therefore, deceased was shifted to Civil Hospital. Deceased expired at about 1.30 a.m. on 27.10.2021. The informant also states that about 8 days prior to the said incident, when she along with deceased had gone to market, at that time, the applicant had obstructed their way and threatened informant that she should allow the deceased to marry him, otherwise she as well as her husband and relatives would be killed. All these acts, therefore, narrated in the FIR clearly show that due to the instigation and abetment of the applicant, the deceased had committed suicide. The statements of witnesses have been recorded and they have supported the prosecution story. Further evidence against the present applicant is that he discovered ladies purse from his house, in which the photograph of the deceased was found.

6. The learned Advocate representing respondent No.2 also raised objection and submitted that the present applicant is aged 30 and he is a married person. The deceased was admittedly aged 15. The deceased was Maratha – Hindu and the applicant is Muslim. There was no previous enmity and, therefore, there is no question of false implication.

The offence is serious. When there was huge age gap and still the applicant wanted to marry the deceased, the intention is clear that this is a case of Love Jihad. It appears that the applicant had corrupt the mind of the deceased by showing love and then the pressuring tactic for the marriage was adopted. The deceased being innocent girl was not able to understand the design. Such person does not deserve any sympathy.

7. Since the contents of the FIR are already narrated in the aforesaid paragraphs, they are not reproduced once again. It can be seen that, at this stage, the applicant is not disputing that deceased was minor. Secondly, there is no dispute that she committed suicide by consuming poisonous substance. The postmortem report as well as the medical documents also show that she was treated as patient of poisoning. The lady, who had introduced deceased to the applicant, her statement has been recorded under Section 161 of the Code of Criminal Procedure and she has stated that she had friendly relations with deceased. She says that she and her family members were residing in the neighbourhood of the deceased, but her family has shifted to another place at about one and half year ago. Thereafter, also she had met deceased 3-4 times and then came to know that the deceased was having love affair with the applicant. It appears that she is the only witness, who is saying that there was love affair between the deceased and the applicant. At this

stage, the applicant (not duty bound to disclose the defence) has not raised such kind of defence that there was love affair between him and the deceased. The statements of father and paternal aunt of the deceased, who had taken her to hospital, would show that deceased had disclosed them the reason for consumption of poison. There appears to be no reason for implication of the applicant and even the applicant is not coming with any concrete story. In his memorandum and discovery under Section 27 of the Indian Evidence Act, the applicant has stated that he had love affair with the deceased and he has kept the photo of the deceased in purse and the same is kept by him in his house and, thereafter, he has led to the discovery of the said purse and photograph. It can be seen at this *prima facie* stage also that his said entire statement is admissible under Section 27 of the Indian Evidence Act because it is the only discovery that has been stated. The applicant is 30 years old person already married. Under such circumstance, when a minor girl was required to take extreme step to commit suicide, this cannot be the case where discretionary relief should be exercised in favour of the applicant. The application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm