

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1289 OF 2022

Badal Gendya Pawra

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.Mukul Kulkarni, Advocate for applicant

Mr.R.B.Bagul, APP for respondent

Mr.S.A.Kulkarni, Advocate for respondent no.2

CORAM : R.G. AVACHAT, J.

DATE : SEPTEMBER 14, 2022

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.125 of 2021 registered with Shirpur City Police Station, Tq.Shirpur, Dist. Dhule, for the offences punishable under Sections 302, 376, 376-D, 201 read with Section 34 of Indian Penal Code and Sections 4 and 6 of Protection of Children from Sexual Offences Act

2. Heard learned counsel appearing for the parties.

3. First Information Report (FIR) has been lodged by the father of deceased on 12.06.2022. It is the case of the informant that

his wife and the deceased daughter would work as maidservants. The deceased left home by 2.00 p.m. on 08.06.2021, to buy some snacks from a nearby grocery shop. She did not return home. It was thought that she might have gone to complete her work. She, however, did not return by evening as well. Search was, therefore, made for her with her friend Laxmi @ Chimu. She was, however, not traced out. On 11.06.2021, it was learnt that the dead body of one girl was found. The informant, therefore, went to Dhule Civil Hospital. He identified the dead body of his daughter on 12.06.2021. The post mortem report indicates that the deceased died of head injury and compression of neck. She was also sexually exploited.

4. The deceased had a boy friend by name, Ravindra. The informant, therefore, lodged FIR against Ravindra and his two friends on suspicion. During investigation, it was found that none of them was involved in the crime. The Investigating Officer, therefore, filed "A" summary report against them.

5. During further investigation, it was found that present applicant and the co-accused had come in contact with the deceased. Though the co-accused had sexual intercourse with her,

the applicant is not alleged to have done the same thing with her. They, therefore, came to be arrested. The charge sheet has been filed against them.

6. Learned counsel for the applicant would submit that the applicant was only last seen in the company of the deceased on 09.06.2021. The dead body of the deceased was found on 11.06.2021. The D.N.A. report rules out the applicant's involvement in the offence of sexual assault. Such report is against the co-accused. The applicant is in jail for little over one year. On investigation, charge sheet has been filed. He, therefore, urged for allowing the application.

7. Learned APP and learned counsel representing the informant would, on the other hand, submit that it is serious offence, may be gang rape as well. The deceased met with homicidal death. The applicant was seen in the company of the deceased for some long time. They, therefore, urged for rejection of the application.

8. Perused the FIR and the police papers relied on. The victim was stated to be little over 18½ years of age. She was

emotionally involved with one Ravindra. The statement of the friend of the deceased indicates that on 08.06.2021, Ravindra and the deceased met at a particular place. Ravindra told the deceased to be getting married with another girl. He even gave her the date of marriage. The deceased wanted to marry him. Ravindra asked the deceased to continue relationship with him post marriage. That was the end of matter.

9. As per the case of the prosecution, the victim met with one of the co-accused, Shirlal @ Shirlya. It was 8.00 p.m. of 08.06.2021. Shirlal @ Shirlya had sexual intercourse with her in the sugarcane field. It was by 10.00 p.m. Shirlal @ Shirlya then called the co-accused – Anil and present applicant and offered them the victim for sexual intercourse. The statement of one Surta Pavara indicates that the co-accused – Anil also had sexual intercourse with the deceased. There is no material to indicate the present applicant to have had sexual intercourse with the victim. The case of the prosecution indicates that the applicant and the co-accused Anil @ Temnya took the victim on motorbike with them.

10. The dead body of the victim was found on 11.06.2021. She was seen hanging by a branch of roadside tree. The post

mortem report indicates the cause of death as "head injury with ligature compression of neck".

11. It is informed that the D.N.A. report rules out the applicant to have sexually exploited the deceased. There is gap of about two days between the time when the applicant was last seen in the company of the deceased and the time of finding of her dead body. As such, the case is based on circumstantial evidence. The applicant is in jail for little over one year. The trial has not yet commenced.

12. In view of the above, the Court is inclined to grant the applicant bail. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.125 of 2021 registered with Shirpur City Police Station, Tq.Shirpur, Dist. Dhule, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount, for the offences punishable under Sections 302, 376, 376-D, 201 read with Section 34 of Indian Penal Code and Sections 4 and 6 of Protection of Children from Sexual Offences Act.

(iii) The applicant shall not tamper with the prosecution evidence.

[R.G. AVACHAT, J.]

KBP