

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3683 OF 2021

Sunil Sakharam Kadam .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr.Sandesh Manikhedkar i/b Vilas Rane for the applicant.
Mr.S.V.Gavand, APP for the State.
Mr.R.A. Chavan, API from Vakola police station.

CORAM: BHARATI DANGRE, J.
DATED : 20th OCTOBER, 2022

P.C:-

1. The applicant face charge under Sections 302, 376, 376-D r/w Section 34 along with co-accused Vinod Ghadi.

The case of the prosecution is the deceased one Pramila was found dead in the house of accused no.1 Vinod Ghadi, with her face having turned black, swelling on her cheeks and bruises noted in the portion from the nostrils running upto the ear and blood oozing from her nose.

2 The complainant, who is the sister of the deceased, when summoned on the spot looking to the situation, expressed her doubt, that she was assaulted. It was also noticed that she was

lying on the bed with her clothes not properly placed, and the charge-sheet allege that prior to the incident i.e. the applicant was residing with Vinod Ghadi and Pramila was also staying with them, and some quarrel ensued between them and she was found dead. The complainant also expressed apprehension that her sister was sexually abused.

3. On the investigating machinery being set into motion, the spot panchnama being conducted which refer to a room belonging to accused no.1 with a bed of 6 x 3 feet being placed in it. The spot panchnama reflect that the mattress on the said bed contain blackish wheatish stains. The body of the deceased was found on the bed.

An Inquest Panchnama was conducted which make reference to bleeding from the nose and swelling on the cheeks, with some abrasion between the nostrils and the left ear. There are some blackish marks on the neck. Inquest Panchnama also record that sister of the deceased was asked to examine her private parts and nothing unusual was noticed.

The body of the deceased was forwarded for post mortem and column no.17 do not record a single injury, column no.21 refer to "irregular hemorrhages at places present". In the column of 'peritoneum and cavity', there is a reference of content of 2000 cc of blood fluid. In the column relating to 'pancreas', contused lacerated brown reddish, is recorded. The cause of death

is opined to be of 'abdominal injury'.

4. The learned counsel for the applicant would submit that his indiction of the said C.R is merely based on hear-say evidence and there is no single witness who has stated that he is either the assailant or he has raped the deceased.

When the learned APP is specifically asked to demonstrate the material to establish the charge u/s.376 and 376D, he fairly states that there is no material to that effect.

5. Coming to the case of the prosecution that the deceased was done to death, by the applicant and co-accused as the charge-sheet accuse them of, statement of one Sandeep recorded on 7/2/2020 is very relevant. He is the witness who has seen the deceased in the company of the two accused persons.

He narrate that on 4/2/2020, when he was present in his house, he was visited by the present applicant and Pramila residing in the same locality. He inquired with Sunil as to presently where he was and he responded by stating that he was residing with Vinod Ghadi. At that time, the pranita told Sunil that she was interested in consuming liquor, and therefore, they left the place. At around 12.15 pm, the said witness visited the house of Vinod Ghadi to find the applicant, Vinod Ghadi and the deceased Pramila consuming liquor. Sandeep was accompanied by his wife and they chit-chatted with them and all of them consumed liquor.

Sandeep expressed to Sunil Kadam who was into cloth business that presently he was unemployed and was in need of some work, and he immediately offered him to accompany him to Thane where he could arrange some business for him. After some time, Sandeep left the place with his wife and as directed, once again returned to Vinod Ghadi's house at 6.00 p.m. When he knocked the door, it was opened by Vinod and when he asked where Sunil was, he was told that he was sleeping and he would wake him up. He went inside the house by keeping the door ajar and when the witness peeped inside, he could notice Sunil sleeping on the bed next to the deceased Pramila. He noticed Pramila turning towards side and thereafter, Sunil got up, wore his clothes and they duo left for Thane.

The aforesaid statement is corroborated by his wife Nagma. Based on this statement recorded by the prosecution, the learned counsel would submit that when Sunil left the house, the deceased Pramila was alive and whatever has transpired, was after he left the house in the company of Sandeep Londhe.

6. In absence of any cogent and reliable evidence compiled in the charge-sheet, leading to the guilt of the applicant, particularly when the case is based on circumstantial evidence, which has to be established by the prosecution by collating each and every circumstance and creating a chain of circumstances, which must conclusively point out the guilt to the particular accused and to no one else than him. The material compiled in

the charge-sheet prima facie fall short of the case of circumstantial evidence that the prosecution intend to establish.

7. The learned counsel for the applicant thus, submit his incarceration is based on mere assumption with no evidence compiled in the charge-sheet.

I am in agreement with the submission advanced by the learned counsel for the applicant. In the wake of the sketchy material in the charge-sheet, he cannot be kept incarcerated further as it is more than 2 ½ years since he is detained in the subject C.R. Hence, the following order

ORDER

- (a) The Applicant – Sunil Sakharam Kadam in connection with C.R.No.44/2020 registered with Vakola Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

The applicant shall be released on cash bail of Rs.25,000/- in lieu of sureties for a period of six weeks. During the said period, the applicant shall arrange for the sureties.

- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police

Officer. The Applicant should not tamper with evidence.

- (c) The applicant shall mark his attendance to the police station once in two months.
- (d) The Applicant shall attend the trial on regular basis.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)