

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL INTERIM APPLICATION NO.1169 OF 2019
(For Bail)
IN
CRIMINAL APPEAL NO.864 OF 2019***

Kumar Valmik Patil

Aged: 29 Years, Occ.: Nil

Having address at: Village Kasheli

Tal: Bhiwandi, Dist: Thane

(Nagpur Central Jail)

...Applicant

(Original Accused)

Versus

The State of Maharashtra

(Through the Public Prosecutor

High Court at Bombay)

...Respondent

Mr. Manoj Mohite, Senior Advocate i/b Mr. Yogesh Dalvi, for the Applicant.

Mr. S. S. Pednekar, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.***

DATE : 8th JULY 2022

ORDER (Per Revati Mohite Dere, J.):

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final

disposal of his aforesaid appeal.

3. The applicant vide Judgment and Order dated 3rd May 2019, passed by learned Additional Sessions Judge, Thane, in Sessions Case No. 129 of 2016, has been convicted for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to undergo imprisonment for life and to pay fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for one year.

4. Learned Senior Counsel for the applicant submits that the prosecution case rests on circumstantial evidence and that the circumstances on record are not sufficient to show the complicity of the applicant in the said crime. He submits that two of the doctors i.e. PW7-Dr. Vinay Haribhau Patil and PW8 – Dr. Shivshankar Maharudra Akuskar, found ligature marks on Minal's (deceased) neck, whereas the doctor who conducted the postmortem i.e. PW9 – Dr. Amol Prabhakar Bidkar, has opined that the deceased was throttled. He submits that the possibility of the deceased being

poisoned could not be ruled out in the facts, having regard to the fact that PW8 – Dr. Akuskar had admitted that the deceased's vomit had poisonous smell. He submits that the samples of vomit were not collected nor sent for analysis. According to the learned senior counsel, the possibility of hyoid bone fracture due to violent vomiting, could not be ruled out. He submits that there was no motive for the applicant to cause Minal's death and that the marriage proposal was in progress.

5. Learned APP opposes the application. He submits that the prosecution has proved all the circumstances with cogent, legal and admissible evidence and that all the circumstances clearly point to the complicity of the applicant in the crime.

6. Perused the papers. Deceased – Minal was staying with her grandmother – Sunita Jadhav, as her mother had expired. The marriage of Minal was fixed with the applicant and the engagement ceremony is stated to have taken place in May 2015. It appears that

the applicant would visit Minal's house and would talk with her regularly on phone. It appears that thereafter, a dispute started between them, as the applicant was doubting Minal's character. It appears that after two months, the applicant also took back the mobile phone, he had given Minal. It is the prosecution case, that on 3rd December 2015 at 10:30 p.m. the applicant called Minal on her grandmother's phone and asked her to come to Ambadi, however, as it was late, her grandmother did not send her. It appears that on 4th December 2015 at 9:30 a.m. the applicant again called Minal on her grandmother's mobile and called her to Ambadi Naka, pursuant to which, Minal left home at 11:00 a.m., saying that she was going to meet the applicant at Ambadi Naka. According to Sunita (grandmother of deceased – Minal), she received a call from the applicant at 5:30 p.m. stating that Minal was admitted in Navjeevan Hospital at Ambadi. Minal's grandmother reached the said hospital, where the applicant and his friends were present. Minal was shifted for further treatment on doctor's advise to Orbit Hospital at Bhiwandi, at 7:00 p.m. by the applicant and others. During the course of

treatment, Minal expired on 5th December 2015 at 2:00 a.m. Thereafter, inquest was done and the dead body was sent for postmortem examination to I.G.M Hospital at Bhiwandi. On finding ligature marks on Minal's neck, A.D report was registered by the police. Thereafter, investigation was transferred to Ganeshpuri Police Station. During the course of investigation, it was revealed that Minal was brought from a lodge at Akloli and that the incident had happened at the said lodge. Investigation also revealed that the applicant was with Minal and that he had brought her to the hospital. The applicant was called for enquiry, however, he did not turn-up for the enquiry on 6th December 2015. The investigating officer enquired with the lodge owner i.e. PW6-Sangita Roshtan Lusbo, who disclosed that on 4th December 2015 at about 12:30 p.m. the applicant and Minal had come to the lodge and disclosed that they were engaged and that they had come for Dev-Darshan and required a room to rest; that at about 3:15 p.m. the applicant sat on a bench of a juice center for 20 minutes and then went in the room and returned back and disclosed that Minal was suffering from epilepsy; that she (PW6-Sangita) went to the room

and saw Minal lying on the bed and that she was having difficulty in breathing, pursuant thereto, the applicant and PW6-Sangita's husband took Minal in an auto-rickshaw to Navjeevan Hospital at Ambadi. During investigation, after assessing the spot, the investigating officer concluded that Minal had not committed suicide. According to PW5 – Nita Sanjay Jadhav, sister-in-law of deceased – Minal, when she asked the applicant as to what had happened, the applicant disclosed that Minal had hanged herself to a ceiling fan. During enquiry, it was learnt that after the marriage of the applicant was fixed with Minal, dispute started between them as the applicant doubted her character and that the applicant took her to a lodge and killed her after throttling her neck. The medical evidence shows that Minal died due to throttling. In the postmortem report, the cause of death of Minal is stated to be 'Death due to throttling'.

7. PW9 – Dr. Bidkar found 2 external injuries on Minal's person and a contusion on the anterior part of neck and oedema around the contusion wound in neck; fracture of hyoid bone and

cricoid cartilage was also noted. PW7 – Dr. Patil of Navjeevan Hospital, where deceased – Minal was taken has stated that Minal was brought by two boys in the hospital; that she was in an unconscious condition; that she was suffering from epilepsy; that she had ligature marks on her neck. He has stated that on asking the boys, the boys stated that the girl hanged herself at Akloli. PW4 - Sunita Jadhav, the grandmother of Minal has stated that the applicant had called Minal on her mobile, pursuant to which, Minal went to meet the applicant. She has stated that the applicant called her at 5:30 p.m. and told her that Minal was admitted in Navjeevan Hospital, as she had a spasm (aakdi). She has stated that Minal had previously never suffered from any spasm (aakdi). According to PW5 – Nita, when she asked the applicant, the applicant disclosed that Minal wanted to change her clothes and therefore they had gone to the lodge. The applicant is further alleged to have disclosed that Minal hanged herself to a fan, pursuant to which, he brought her to the hospital. PW6 – Sangita has stated that the applicant and Minal had come to her lodge and that she had given them one room, after they disclosed that they were engaged.

She has stated that she saw the applicant at about 3:15 p.m. on a bench of a juice center; that he stayed there for 20 minutes; that when she asked him, he told her that Minal was getting fresh; that after that the applicant went to the room and that after 2 – 3 minutes, he came out of the room and told that Minal had suffered a spasm (aakdi), pursuant to which, she went inside the room. PW6 – Sangita has stated that Minal was lying on the bed and had difficulty in breathing. She has stated that the applicant and her husband took Minal to the hospital. The said witness has also proved the entry in the Hotel Register. *Prima facie*, the evidence on record is contrary to the defence taken by the applicant. This is an additional link in the circumstances brought on record.

8. *Prima facie*, considering the overall evidence on record and the circumstances *qua* the applicant, this is not a fit case to suspend the applicant's sentence and enlarge him on bail.

9. Hence, the application is rejected and disposed of as such.

V. G. BISHT, J.

REVATI MOHITE DERE, J.