

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.67 OF 2023

Sultana w/o Majanu Shaikh
Age: 45 years, Occu.: Household,
R/o. Bhokar, Tal.: Shrirampur,
Dist. Ahmednagar

.. Appellant

Versus

1. The State of Maharashtra
Shrirampur Taluka Police Station;
Through Special Public Prosecutor,
Shrirampur.

2. Raosaheb s/o Dada Barde
Age: Major, R/o. Bhokar,
Tal. Shrirampur, Dist. Ahmednagar

.. Respondents

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Mr. J. I. Shaikh, Advocate for appellant.
Mr. A. M. Phule, APP for respondent No.1 – State.
Mr. Govind A. Kulkarni, Advocate for respondent No.2 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 21st March, 2023

PRONOUNCED ON : 19th April, 2023

ORDER :-

. Present appeal has been filed by the appellant - original
accused No.8 under Section 14-A(2) of the Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter

referred to as the “Atrocities Act”) to challenge the rejection of her bail application i.e. M.A. (Cri. Bail) No.268 of 2022 under Section 439 of the Code of Criminal Procedure by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Shrirampur, Dist. Ahmednagar on 04.01.2023. The present appellant has been arrayed as accused in Crime No.312 of 2022 registered with Shrirampur Taluka Police Station, Dist. Ahmednagar, which came to be lodged at the behest of present respondent No.2, for the offences punishable under Sections 302, 201, 342, 364, 120(B) read with Section 34 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act and under Section 142 of the Maharashtra Police Act, 2012.

2. Respondent No.2 is the father of deceased Deepak. He had lodged missing report in respect of Deepak. Deepak was 31 years old person. He had love affair with the daughter of original accused No.2 and present appellant. About a month prior to lodging of the FIR, Deepak and the girl went missing. The maternal uncle of the girl, who is original accused No.1 in this case, had lodged missing report in respect of her with Supa Police Station on 30.07.2022. Thereafter, Deepak had gone to Pune on 30.08.2022 in connection with some work. He had given a phone call at about 8.30 p.m. and told the informant that he has reached Pune and told that he would search the work and then he put off the phone. There was suspicion and

care in the mind of informant, but as usual he went to his duty on 31.08.2022. He was serving with one Garva Hotel. Around 4.00 p.m. one Suresh Wakade and Lalu Aher, who used to be stationed in front of the hotel, informed the informant that Deepak has been confined by accused No.1 Imran. Informant guessed that as Deepak and the girl had eloped, accused might be angry. Thereafter the informant searched Deepak at different places and also his relatives searched him at Pune. He got information from one Kiran Sanjay Umap, who is the friend of deceased Deepak around 11.00 a.m. on 31.08.2022, that Deepak was abducted by accused Imran along with other and his photograph was taken. The abduction was with an intention to commit his murder. He then handed over the deceased to accused No.2 Majnu, accused No.3 Sameer and Accused No.4 Ajeez. He brought to Bhokar on two motorcycles. Thereafter whereabouts of Deepak are not known. He therefore lodged report on 01.09.2022 stating that all these persons might have committed murder of Deepak.

3. It appears from the documents on record that the accused persons have been arrested on different dates and as and when their involvement revealed, they came to be arrested. Present appellant came to be arrested on 18.09.2022 and since then she is in jail.

4. Present appellant filed the application for bail under Section 439 of the Code of Criminal Procedure, however, that came to be rejected by learned Special Judge, Shrirampur by the impugned order. Hence, this appeal.

5. Heard learned Advocate Mr. J. I. Shaikh for the appellant, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Mr. Govind A. Kulkarni , who is appointed to represent the cause of respondent No.2.

6. It has been vehemently submitted on behalf of the appellant that now the investigation is over and charge-sheet is also filed before the learned Special Judge. Further, even the supplementary charge-sheet is also filed on 23.02.2023. Therefore, the custody of the appellant is not required for the purpose of investigation. The entire evidence that has been collected revolves around accused Nos.1 to 4. Even certain photographs have been taken showing accused No.1 Imran was with deceased Deepak. There is statement of the girl saying that there was love affair between her and deceased Deepak and both of them had eloped, and she was major. Though missing report in respect of her missing was lodged, no further FIR was lodged by anybody against deceased. She had given statement at that time that she had gone along with Deepak voluntarily. However, it

appears that the family members of the girl were annoyed, since it was an inter-religion affair, however, as regards the present appellant is concerned, she has no role to play. There is no evidence against the present appellant. It is alleged that Deepak had taken to the house of accused No.2 and present appellant and there he was beaten. However, there is no witness to support this theory. Under such circumstance, she need not be kept behind the bar. The learned Trial Judge ought to have allowed the application.

7. Learned APP and the learned Advocate, who is appointed to represent the cause of respondent No.2, have strongly opposed the appeal and submitted that there is ample evidence on record to show that Deepak was abducted by accused No.1 Imran from Pune and then was brought to Bhokar. Witness Kiran Umap, in his statement under Section 161 of the Code of Criminal Procedure, stated that he was with Deepak around 10.40 a.m. on 31.08.2022. When they were about to sit in a rickshaw a person came and took out the photograph in his mobile. When Kiran asked that person as to why he has picked up photograph, he told that he should ask the reason to Deepak. He then caught hold of the collar of Deepak and dragged him out of rickshaw. Deepak was addressing the said person as Imran Mama and saying that he has some misunderstanding. He has come along with his friend to search the work. When Kiran asked Deepak as to

what is the matter, then Deepak told that said person is the maternal uncle of the girl. Even at that time Deepak told Kiran that he had affair with the niece of the said person and they had eloped about a month ago. He then says that still Deepak's collar was held by accused No.1 Imran. He had given a video call to somebody. He showed Kiran to that person and asked as to whether he recognizes this person. The said person answered in the negative. But then when the camera was towards Deepak and the said person was asked to identify Deepak, that person identified him. One more unknown person came to the spot and they both had assaulted Deepak. The key of the motorcycle of Deepak was snatched from the hands of Kiran and accused Imran told Deepak that he was allowed to let go on the first occasion, but now he will not be spared alive. He says that Imran had then taken Deepak on his motorcycle along with the said unknown person. He says that around 6.45 p.m., on the same day, he went to the house of Deepak's relative at Shirasgaon and informed the incident to Deepak's sister and brother-in-law. Thus, there is evidence against accused Imran. This evidence will have to be connected further. There is also statement of said relative of deceased and there is also evidence in respect of love affair between the deceased and the girl. The crime scene panchanama drawn on 29.11.2022 has been drawn upon the information given by accused

Asif and it is clear that Deepak was taken to the house of the present appellant. He was assaulted there and the statement was made that present appellant had disclosed that the throat of deceased Deepak has been slit and he has been assaulted by hammer. He has been murdered and his body has been taken by accused No.2 Majnu and accused No.6 Sonu towards river Godawari. Thereafter, search was made at the place where the dead body was thrown, however, it was not found. It is not necessary that the corpus should be found. There is sufficient evidence to indicate that Deepak was abducted, murdered and then dead body was dumped in the river in order to screen the real offenders. It is the one of the heinous crime that has been committed and further Deepak was from different religion than that of the girl and, therefore, the relatives of the girl got annoyed with him when the girl had eloped with Deepak. If the appellant is released on bail, there is danger to the life of the witnesses.

8. At the outset, we would like to say that as on today the dead body has not been found. It is stated that the dead body was dumped in the river. Statement of certain witnesses said that they are the divers and they had searched for the body in the river. However, as the body has not been found, we cannot even *prima facie* say at this stage that Deepak has been murdered. When it comes to grant of bail to a particular accused, then the role of that accused is required to be

considered at the first instance and, thereafter, the other circumstances are required to be considered. There might be evidence against the other accused persons, but we would like to confine ourselves to the role attributed to the present appellant. None of the witnesses, whose statements under Section 161 of the Code of Criminal Procedure have been recorded, has assigned any role to the appellant. There is nothing in the main charge-sheet as well as in the supplementary charge-sheet about role played by the appellant - accused. The prosecution is now relying upon the crime scene panchanama. Under which provisions of law such panchanama is prepared is not clarified. It appears that there are two crime scene panchanamas on the basis of the information given by accused Imran as well as accused Asif. The inadmissible piece of evidence cannot be considered even at the stage of bail. Such crime scene panchanama might be the result of the interrogation by the investigating officer to the concerned accused, however, taking it as a base, further admissible evidence is required to be collected by the investigating officer. The statement of alleged eye witness to the offence of abducting i.e. Kiran Umak is concerned, it might be admissible as against accused Imran and another accused, but at that time, the present appellant was not in picture. Therefore, it will not be justifiable to keep the present appellant behind bars. When there

appears to be very less evidence, since the investigation is over and charge-sheet is also filed on record, the further physical custody of the appellant, who is the lady, is not required and, therefore, the learned Special Judge ought to have allowed the bail application. It appears that the sensitivity of the matter prevailed on the learned Special Judge to reject the application without considering the role attributed to the appellant. The statements in the crime scene panchanama alleged to have been made by the co-accused cannot bind upon the present appellant. Hence, the appeal deserves to be allowed, however, in view of the fact that the present appellant would also be the resident of the same village from where the dispute arose, it is necessary to impose adequate conditions while releasing her on bail. Hence, the following order :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the Atrocities Act/Additional Sessions Judge, Shrirampur, Dist. Ahmednagar below Exhibit-1 in M.A.(Cri. Bail) No.268 of 2022 dated 04.01.2023 stands set aside. The said application stands allowed.
- iii) Appellant – **Sultana Majnu Shaikh**, who has been arrested in connection with Crime No.312 of 2022 registered with Shrirampur Taluka Police

Station, Dist. Ahmednagar for the offences punishable under Sections 302, 201, 342, 364, 120(B) read with Section 34 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act and under Section 142 of the Maharashtra Police Act, 2012, be released on P.R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

iv) The appellant shall not to reside in village Bhokar, Taluka Shrirampur, District Ahmednagar till the conclusion of trial. She should reside elsewhere, and before submission of bail papers, the appellant should give complete address of her proposed residence with her mobile number as well as the mobile numbers of her two relatives to the Trial Court as well as to the Investigating Officer.

v) She shall not tamper with the evidence of the prosecution in any manner.

vi) She shall not indulge in any criminal activity.

vii) Bail before the Trial Court.

viii) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm