

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

932 CRIMINAL WRIT PETITION NO.955 OF 2023

**SANTOSH RANGLAL RAKA
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Petitioner : Mr. Suvidh S. Kulkarni
APP for Respondent – State : Mrs. G.L. Deshpande

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**CORAM : R. M. JOSHI, J.
DATE : SEPTEMBER 07, 2023**

PER COURT :

. The petitioner is brother-in-law of the deceased, who is facing trial in connection with Crime No. 468 of 2017 registered with Georai Police Station, Dist. Beed for the offences punishable under Sections 302, 304B, 498-A, 506 r/w. 34 of the Indian Penal Code (for short, 'IPC').

2. Initially First Information Report came to be lodged in respect of the offence punishable under Section 307 of the IPC. The informant is sister-in-law of the petitioner. In her statement dated 09.09.2017 she had made allegations against husband and in-laws regarding the harassment caused to her of the demand of dowry attributable under Section 498-A of the IPC. There is specific mention

of the incident occurred on 06.09.2017 wherein according to the informant at around 09:00 a.m. the present petitioner along with husband of the informant and other co-accused came to the house. There is allegation that they threatened her to vacate the house. There is specific allegation that the present petitioner and co-accused caught hold of her hands and legs and her husband - Dharam administered some substance into her mouth. She claims that she became unconscious and later on regained consciousness. She thereafter went to the government hospital, where she was treated upto 08.09.2017 and thereafter went to the Nirantar Hospital and finally she was taken to Aurangabad to Hedgewar Hospital for treatment. On 10.09.2017 she died while under treatment.

3. Learned counsel for the petitioner submits that even if the evidence as it appears from the charge-sheet is accepted as it is, it is not possible to hold that the petitioner has committed offence under Section 302 of the IPC. In order to support his submissions first of all he has relied upon the viscera report which does not indicate any poisonous substance being administered to the deceased. It is his further submission that from the statement of the son of the deceased, it is clear that the deceased after the occurrence of the

alleged incident had been to the school and thereafter got herself admitted in the hospital on the next day. It is submitted by referring to the medical evidence on record i.e. the pathological report of the examination of liver of the deceased that she was suffering from *jaundice*. By referring to the medical papers of the government hospital, it is submitted that she did not take any treatment there and hence the question of her stomach being washed does not arise. It is his further submission that if no stomach wash was given to the informant, the traces of poison ought to have been found in the viscera which is 'negative'. By referring to the statements of the parents it is submitted that the allegations are mainly against the husband and not against the petitioner who is brother-in-law of the deceased. He also referred to the spot panchanama which shows that nothing incriminating was seized from the spot.

4. Learned APP supported the impugned order by referring to the charge-sheet and material evidence on record.

5. It is needless to say that at the stage of discharge it is not open for any Court to conduct mini trial. At this stage, Court is required to see as to whether there is strong suspicion against the

accused on the basis of material on record to frame charge against him. Needless to state that defence of the accused can never be considered at this stage. *Prima facie* perusal of the charge-sheet indicates that there is specific statement of the informant about the incident occurred on 06.09.2017. She has categorically stated that her husband administered poisonous substance to her with the help of petitioner and co-accused who had caught hold of her hands and legs. At this stage, the said statement is more than sufficient to hold that all the accused were sharing common intention amongst them for administering poisonous substance to the deceased. Perusal of the record further indicates that when the deceased was taken to the government hospital, the provisional diagnosis is made that it is the case of goodnight liquid poisoning and rat poisoning.

6. It is not in dispute that immediately thereafter i.e. on 10.09.2017 deceased died. Post-mortem notes clearly indicate that the cause of death to be 'post mortem and clinical findings consistent with poisoning.' Thus, there is more than ample evidence on record in order to connect the petitioner herein to the death of the deceased.

7. As far as the contention of the learned counsel for the petitioner about the report of viscera is 'negative' is concerned, pertinently the incident of administration of poison has taken place on 06.09.2017 whereas the deceased died on 10.09.2017. At this stage, this Court cannot record any finding to the exact treatment given to the deceased while she was in hospital. Ordinarily, if any patient is admitted in case of poisoning, the first precaution is taken by the Medical Officer is to wash the stomach in order to remove the contents of poisonous substance from the body. Though it is sought to be argued on the basis of the medical papers of the government hospital that the deceased against medical advice took discharge, it cannot be conclusive evidence about no stomach wash ever been done. In such circumstances, this Court finds it not possible to accept the contention of the petitioner that since the viscera's report does not show any administration of poison, it is not the case of murder under Section 302 of the IPC. As far as the spot panchanama is concerned, merely because it says that nothing incriminating is seized therefrom it does not become a conclusive proof that no offence was committed pertinently when the said panchanam is drawn on 17.09.2017. Needless to say that after lapse of 11 days if nothing is found from the

spot, it is not sufficient to hold that no offence is committed in this case.

8. Having regard to the aforesaid facts, it is not the case wherein no charge can be framed against the petitioner. All defences taken by the petitioner are always open for its consideration during the course of time. In such circumstances, the impugned order cannot be interfered with. In view of above discussion, the Criminal Writ Petition fails and stands dismissed.

9. It is clarified that the aforesaid observations are made only for the purpose of deciding the present petition and that the learned Trial Court shall not get influenced by the same while deciding the case on merits.

[R. M. JOSHI]
JUDGE

GGP