

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.176/2023

Sharik @ Shahrukh Sayyad Rauf,
Aged about 23 years,
Occu-Labourer,
R/o Subhash Chandra Ward,
Pandharkawada, Tq. Kelapur,
Dist. Yavatmal.

... Appellant

- Versus -

1. State of Maharashtra,
Through Police Station Officer,
Yavatmal Rural, Tq. Yavatmal,
Dist. Yavatmal.

2. Shobha Banduji Sawadh,
Aged about 51 years,
Occu.-Housewife,
R/o Indira Ward, Hinganghat,
Tq. Hinganghat,
Dist. Wardha

... Respondents

Mr. Imran Deshmukh, Advocate for the Petitioner.
Mr. N.R.Rode, Advocate for respondent no.1.
Mr. P.S.Wathore, Advocate for respondent no.2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.
DATE : 25.04..2023.**

ORAL JUDGMENT (Per Vinay Joshi, J.)

1. Heard.
2. **Admit.** Heard finally with the consent of learned counsel for the respective parties.
3. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“SC and ST Act” for short) raising challenge to the order dated 20.1.2023 passed by Additional Sessions Judge, Yavatmal in Special Atrocity Case No. 119/2022, whereby regular bail came to be rejected. The appellant Sharik @ Shahrukh was came to be arrested in connection with Crime No.573/2022 registered with Rural Police Station, Yavatmal for offences punishable under Sections 302 read with section 34 of the Indian Penal Code and Section 3(2) (v) of the SC and ST Act.
4. The police completed investigation and filed chargesheet. The appellant Sharik @ Shahrukh Sayyad Rauf

applied for regular bail, which came to be rejected vide impugned order.

5. The appellant seeks bail by claiming innocence, false implication, inadequacy of evidence etc. The State as well as learned counsel for respondent no.2 resisted the bail by contending that offence is of serious nature and there is evidence connecting the appellant's role and hence, he does not deserve bail.

6. At the instance of report dated 12.9.2022 lodged by mother of deceased Neeta, crime was registered. It is the prosecution's case that Neeta, a resident of Higanghat, was temporarily stayed at the Yavatmal for educational purpose. Neeta has disclosed to her mother (informant) co-accused Arif Ali was insisting her for marriage to which she refused. On 4.9.2022 the informant tried to contact deceased Neeta, however, her phone was not reachable. Finally, she went to Yavatmal and after inquiry it reveals that Neeta was missing. The informant thought that co-accused Arif who was continuously harassing and insisted Neeta for marriage must have committed crime and, therefore, the report. The Police investigated the matter and file chargesheet against both accused.

7. During course of investigation, co-accused Arif showed his willingness to make disclosure statement, which came to be recorded. He has disclosed that on the date of occurrence both of them went in the field with deceased Neeta. Since Neeta refused to marry with co-accused Arif, later got annoyed and with the aid of Sharik Shahrukh strangulated Neeta. He also stated that at the relevant time, Shahrukh caught hold Neeta. Though the prosecution is pointing the said circumstance against the accused, however, the same is not admissible. The second circumstance is about finding of tiffin of Neeta from the house of sister of appellant. In this regard, again statement of co-accused made to the accused led to recovery. Needless to say that the said statement cannot be used against the appellant. The police have recorded statement of Salma who is sister of the appellant Shahrukh. She stated that once appellant came to her house with Arif and handed over tiffin. Even if the said statement is accepted as it stands, fell short to connect appellant with the crime. Besides, above two circumstances nothing has been shown to implicate the accused. Rather, we do not find substantial incriminating material against the appellant pertaining to commission of crime.

8. Having regard to the material collected against the appellant, his detention during trial is unwarranted. Investigation is complete and chargesheet has already been filed.

9. In view of the above, the appeal deserves to be allowed. Hence, following order:

(i) Criminal Appeal is allowed.

(ii) The impugned order dated 20.1.2023 passed by Additional Sessions Judge, Yavatmal in Special Atrocity Case No.119/2022 is hereby quashed and set aside.

(iii) The appellant – Sharik @ Shahrukh Sayyad Rauf is released on bail on his furnishing P.R. bond of Rs. 25,000/- with one or two sureties in the like amount.

(iv) The appellant shall not tamper the evidence of prosecution witnesses.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

ambulkar.

Signed By: MUKUND
LAXMANRAO AMBULKAR
Private Secretary

Signing Date: 26.04.2023 10:39