

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

CRIMINAL APPEAL NO. 299 OF 2023

1. Mukesh s/o Rajbahadur Trivedi
Aged 51 years, Occ.: Shopkeeper,
R/o. At-Pethward, Bramhapuri,
Tah. Bramhapuri, Dist. Chandarpur
Currently lodged in Chandrapur Jial

} ... Appellant

Versus

1. State of Maharashtra,
Through Deputy Superintendent of Police,
Bramhapuri Police Station,
Bramhapuri, District Chandrapur.

2. Shweta Shyam Ramteke (complainant)
Nr. Shiv Mandir Gurudev Nagar,
Bramhapuri, Chandrapur.

} ... Respondents

Mr. N.B. Rathod, Advocate for appellant.

Mr. V.A. Thakare, APP for respondent No.1.

Ms. Kirti Deshpande, Advocate (appointed) for respondent No.2.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.

DATE : 04.07.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

Heard.

(2) **Admit.** Heard finally by consent of both the
learned counsel for the parties.

(3) This is an appeal challenging the order of rejection of regular bail dated 28.02.2023 passed on Exh. 1 in Criminal Bail Application No.640/2022.

(4) The appellant-Mukesh Trivedi has been arranged as an accused No.2 in Crime No.563/2022 registered with Police Station Bramhapuri, District Chandrapur for the offences punishable under Sections 302, 201, 1205-B of the Indian Penal Code and Section 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The investigation is complete and charge-sheet has been filed against the appellant-Mukesh and co-accused Ranjana.

(5) It is prosecution case that co-accused Ranjana married with deceased Shyam long back having two grownup daughters. Shyam died in the intervening night of 05.08.2022 to 06.08.2022, at his residence, which was followed by cremating the dead body by all family members. After four months from the occurrence i.e. 12.11.2022 informant Shweta who is daughter of deceased as well as co-accused Ranjana, has lodged a report alleging

that her mother (Ranjana) having illicit relations with appellant – Mukesh have conspired to kill Shyam, as he was coming in the way of their relationship. In accordance with the plan co-accused Ranjana administered some sleeping pills to Shyam as well as smothered him on the intervening night of 05.08.2022 to 06.08.2022. It is her case that at relevant time Ranjana had telephonic talk with appellant Mukesh who instructed her to create a scene that Shyam met with natural death. After four months from the death of Shyam, informant Shweta came across the voice recording in between Ranjana and Mukesh where there was a talk in between them about eliminating Shyam. After realizing that the Ranjana and Mukesh in furtherance of their common intention killed Shyam, therefore, the report.

(6) The learned counsel appearing for appellant strongly criticized the material collected by police during the course of investigation. It is submitted that the prosecution case solely rests on the telephonic conversation, allegedly took place in between appellant-Mukesh and Ranjana, at relevant time. According to him, there is no sanctity to the seizure of mobiles as well as there are no chances of tampering. He would submit that as per prosecution case itself, the

appellant was not present at the time of occurrence, but the charge is principally about hatching criminal conspiracy.

(7) On the other hand, learned APP as well as Advocate Deshpande (appointed) for the informant resisted the bail. It is submitted that both accused in pre-planned manner eliminated deceased Shyam. There is ample material about the illicit relationship in between both accused. There is material to indicate that appellant has purchased sleeping pills for which the statements are recorded. Moreover, at the instance of appellant one mobile handset of sister of informant has been seized. The prosecution also relied on the part of transcript of the conversation allegedly took place in between accused.

(8) The case is totally based on circumstantial evidence. As per prosecution case, the appellant was not present at the time of occurrence. The charge being of criminal conspiracy, obviously, it is a matter of inference to be drawn from various circumstances. It reveals that on 06.08.2022 in the morning Shyam was found lying dead at his residence. Nobody suspected about his death which resulted into cremating dead body. Though, the prosecution alleges the case of

causing death by way of administering sleeping pills and smothering, however, as body was cremated, we are at loss to ascertain the cause of death. In the background, we have accessed the available material. Pertaining to note that though informant's sister allegedly came across the incriminating conversation prior to 26.10.2022, however, she did not disclose the same for next fifteen days. It is a matter of evidence about the reliability of the recorded conversation. Though, the police have recorded statements to show that appellant has purchased some sleeping pills, however, the evidence is to be led to connect the said aspect with the death. It reveals that at the instance of accused one mobile handset was seized after three months from the occurrence. The matter largely hinges around the electronic evidence which has to pass the rigour of scrutiny.

(9) The investigation is complete and charge-sheet has been filed. Since, already mobile handset have been seized element of tampering does not remain as such. The trial will take its own time for disposal. In above peculiar facts, we see no reason to detain the appellant behind bar for indefinite period. In view of that, the appellant has made out a case to use discretion in his favour in

granting bail.

ORDER

(i) Criminal appeal is allowed.

(ii) The impugned order of rejection of bail dated 28.02.2023, passed in Criminal Bail Application No.640/2022, is hereby quashed and set aside.

(iii) The appellant – Mukesh s/o Rajbahadur Trivedi shall be released on bail in Crime No.563/2022, registered with Police Station Bramhapuri, District – Chandrapur, relating to offences punishable under Sections 302, 201, 120(B) of the Indian Penal Code and Section 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on his furnishing PR. Bond of Rs.50,000/- with one or two sureties in the like amount.

(iv) The appellant shall not tamper the prosecution evidence in any manner.

(v) The appellant shall attend the concerned Police Station on first Monday of each month in between 10:00 a.m. to 12:00 noon till conclusion of trial.

(10) The appeal stands disposed of in the above terms.

(11) Fees of appointed counsel be paid as per rules.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]