

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

CRIMINAL APPEAL NO.388 OF 2023

Arif Ali Abid Ali, aged about : 42 years,
Occupation : Labour, R/o Indira Nagar,
Yavatmal, Tq. & Dist. Yavatmal

... APPELLANT

VERSUS

1. The State of Maharashtra, through
Station House Officer, Yavatmal
Rural Police Station, Yavatmal, Tq. &
Dist. Yavatmal.
2. Sau. Shobha Banduji Sawadh, Aged
about : 52 years, Occupation :
Labour, R/o Indira Ward,
Hinganghat, Tq. Hinganghat & Dist.
Wardha.

... RESPONDENTS.

Shri V.D. Darne, Advocate for the appellant.
Shri Rode, A.P.P for the respondent/State.
Shri Wathore, Advocate for respondent no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 08.08.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.** The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

2. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989('the SC and ST Act') raising a challenge to the order dated 18.05.2023 passed by the Special Judge, Yavatmal in Special Case No.119 of 2022 whereby regular bail came to be rejected. The appellant/accused Arif Ali Abid Ali came to be arrested in connection with the Crime No.573 of 2022 registered with the Rural Police Station, Yavatmal for the 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.

3. The Police have completed the investigation and filed the charge-sheet. The appellant applied for the regular bail, which came to be rejected vide impugned order dated 18.05.2023. The appellant seeks bail by claiming innocence, false implication, inadequacy of evidence. The appellant also claimed bail on the ground of parity since this Court has released the co-accused Sharik @ Shahrukh Sayyad Rauf vide order dated 25.04.2023 passed in Criminal Appeal No.176 of 2023. The State as well as learned Counsel for the respondent no.2 resisted the bail by

contending that the offence is of serious nature and there exists prime role of the appellant.

4. At the instance of the report dated 12.09.2022 lodged by the mother of deceased Neeta, crime was registered. It is the prosecution's case that Neeta, a resident of Higanghat, was temporarily staying at Yavatmal for preparation of competitive examination. Neeta had disclosed in past to her mother that the appellant Arif Ali was insisting her for marriage to which she refused. On 04.09.2022, the informant could not contact Neeta on phone, hence she went to Yavatmal and on inquiry she learnt that Neeta was missing. Therefore she filed the missing report. Dead body of Neeta was found on 06.09.2022. Thereafter, the informant recapitulated that the appellant was continuously harassing Neeta and therefore, he must have been committed crime, hence the report.

5. It is the prosecution case that at relevant time, the appellant/accused got annoyed by refusal of marriage proposal by Neeta hence he has strangled her by a scarf. Though such case is made out however the matter is to be viewed from the angle of availability of admissible material against the appellant. In this regard, the prosecution has relied on three circumstances i.e. suspicion

expressed by the informant mother, memorandum and seizure panchnama at the instance of the appellant and continuous telephonic conversation between the appellant and deceased soon-before her death. We have examined the said material in context with the prosecution case. Admittedly, the mother has merely expressed suspicion against the appellant. So far as the memorandum under Section 27 is concerned, it is the prosecution case that the accused has shown the place where the ligature namely scarf was lying. As per the memorandum statement, the accused while traveling by two wheeler, the scarf fell on the road. At the instance of the accused, the Police went to said place after two months from the occurrence and inquired about the scarf. According to the prosecution case, one of the village lady came forward, brought the scarf and said that before two months she got said scarf lying on the road. It is a matter of appreciation during the trial whether it could be considered as a memorandum and consequential discovery of the fact.

6. True, the prosecution has brought on record that on the date of occurrence and prior to that, there were continuous phone calls between the appellant and the deceased. To our mind, besides continuous telephonic conversation there is no other material against the appellant.

7. Learned counsel for the informant though attracted our attention to the part of the memorandum where the accused confessed about the crime however we are afraid even at this stage to consider the same. Besides that the cause of death is still unknown. The Medical Officer has not seen any surface wounds or internal injuries at the neck hyoid bone in consonance with the case of death by strangulation. On query the Doctor has expressed about the possibility of strangulation. However it is a matter of trial to appreciate whether without any sort of neck injuries could there be a death by strangulation.

8. Having regard to above circumstances, we are of the view that on that basis the liberty of individual cannot be curtailed. The accused is behind the bar for more than ten months. The investigation is already complete and charge-sheet is filed. In view of that, we are inclined to exercise our judicial discretion for grant of bail. Hence the following order :

- (a) The Criminal Appeal is allowed.
- (b) We hereby quash and set aside impugned order dated 18.05.2023 passed by the Special Judge, Yavatmal in Special Case No.119 of 2022
- (c) The appellant/accused Arif Ali Abid Ali in connection with

Crime No. 573 of 2022 registered with the Rural Police Station, Yavatmal for the 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, be released on bail on his furnishing P.R. bond of Rs.50,000/- with one or two sureties in the like amount.

- (d) The appellant/accused shall not tamper the evidence of prosecution witnesses.
- (e) The appellant/accused shall not enter into the territorial limit of Hinganghat, where the informant resides.

9. The application stands disposed of accordingly.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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