



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 BAIL APPLICATION NO. 39 OF 2024

Rahul Sanjay Jadhav

..APPLICANT

-VERSUS-

The State of Maharashtra

..RESPONDENT

...

Advocate for Applicant : Mr. Pande Balraj Prakash

APP for Respondent/State : Mr.Mukesh K. Goyanka

Advocate for Respondent No.2 : Mr.Sunil S. Warbhuwan

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**CORAM : SANJAY A. DESHMUKH, J.
DATED : 12th MARCH, 2024.**

PER COURT :-

1. The applicant is seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.170 of 2023 registered in MIDC CIDCO Police Station (Aurangabad City), Dist.Aurangabad, for the offences punishable under sections 302, 376(D), 397, 341, 201 read with 34 of the Indian Penal Code, on the allegation that he along with co-accused committed murder of 32 years old woman.

2. It is averred in the report by the husband of the prosecutrix that on 02.04.2023 his wife went to attend the prayer in

Church. She attended the prayer there. At about 1.00 p.m., she suffered from stomach ache and she proceeded to her house, but some persons informed to the informant that his wife is lying unconscious near to Motiwala colony near Airport, Aurangabad. He went there and saw that his wife was lying there. Her hands were tied by odhani with one tree. She was having injuries to her head and blood stained stones were found there. She was taken to GHATI Hospital. Doctors examined her and declared that she is no more.

3. The learned advocate for the applicant submitted that incident took place in the day light, however, there is no eye witnesses to the incident. Though some of the witnesses have stated that they had seen the applicant and other co-accused following her, however, that is not an evidence of last seen. He further pointed out that the motive is not mentioned in the report that there was earlier quarrel that this applicant Rahul Jadhav said her that he is loving with her and quarrel took place on that count. He further submitted that nothing is to be recovered from this applicant and there is no evidence of CCTV footage. He therefore prayed to grant bail to this applicant.

4. The learned APP for the respondent/State strongly opposed the application. Learned Advocate Mr.Sunil Warbhuwan for

respondent no.2 also strongly opposed the application. The learned APP for the State pointed out the statements of the witnesses i.e. Kajal Magre and Priti Bharsakhale, who saw this applicant and other co-accused following the prosecutrix when she left the Church. The learned APP also pointed out the postmortem report, which shows that there are 34 injuries sustained to the deceased. During postmortem it was revealed that there was sexual assault with the prosecutrix. The learned APP lastly submitted that considering the serious nature of the crime and other co-accused are having criminal antecedents and the evidence of last seen, the application deserves to be rejected.

5. Perused the charge-sheet. There is evidence of last seen of the applicant and other co-accused, who were following the prosecutrix. There is medical evidence of sexual assault. The postmortem report also shows that the cause of death as homicidal death.

6. In the case of ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 SCC 559***, the Hon'ble supreme Court in para 22 has laid down eight guidelines. Para 22 is reproduced as under:-

"22. As reiterated by the two-Judge Bench of this Court in Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765, it is well-settled that the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

7. In the case of **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, (1987) 2 SCC 684**, the Hon'ble Supreme Court in para 6 observed as under :-

"6. We are constrained to observe that Justice D. S. Bajpai refused to grant the prayer and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in every criminal case more particularly in a murder case where a citizen who let alone losing liberty has lost his very life. Another ground for granting bail was that trial was delayed, therefore the accused was entitled to bail. This also

cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

8. The applicant is booked for serious crime for commission of gang rape and murder of helpless woman for which death penalty is prescribed. There is evidence of eye witnesses Kajal Magre and Priti Bharsakhale who saw the applicant while following the prosecutrix when left the Church. Medical evidence shows 34 injuries and evidence of sexual assault on the prosecutrix. Thus there is prima facie reasonable ground to proceed against the applicant. Thus, considering the ratio and guidelines in the above case laws and the fact that the applicant is prosecuted for the serious crime of

murder certainly, he will pressurize the prosecution witnesses. Considering all these aspects, the application deserves to be rejected. It is accordingly rejected.

(SANJAY A. DESHMUKH, J.)

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