



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

909 BAIL APPLICATION NO. 519 OF 2024

SHAMSHODDIN NASIRODDIN QUAZI
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Ms. Ashwini Annasaheb Lomte.
APP for Respondent/State : Mrs. Dipali S. Jape.
Advocate to assist PP : Mr. R. V. Gore.
...

CORAM : **SANJAY A. DESHMUKH, J.**
DATE : 24th April, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.413 of 2023, registered with Ambajogai City Police Station, District Beed, for the offences punishable under Sections 302, 120-B and 201 read with 34 of the Indian Penal Code.

3 It is averred in the report that deceased Jakia Begum was residing with co-accused Shaikh Alim, who is her son-in-law. It was because she was deserted by her husband and therefore, in compelling circumstances she was residing there. It is alleged that on 22.10.2023, Jakia Begum was found dead. On the next day, in the

presence of informant and other relatives, the funeral on the dead body of Jakia Begum was performed. During the course of last bath of pre-funeral, it was noticed that there was injury on her forehead and ligature marks which were noticed by one nurse Shabana, who snapped the photographs of the said injuries in her handset of mobile phone. Thereafter, last rites were performed. Thereafter, the informant went to Mumbai. On the basis of one diary found in the room of deceased Jakia Begum, it was noticed that she was harassed by the co-accused wife of Shaikh Alim, who is her daughter, in which she made allegations that her daughter is harassing her frequently. The informant lodged the report on 03.11.2023.

4 The learned counsel for applicant submitted that the application of this applicant for anticipatory bail was rejected and he is arrested. The learned counsel for applicant submitted that the applicant has roots in the society. He will not flee away from the trial. He is falsely implicated in the crime. He has even made allegations against accused No.1, who is advocate, that he is helping to his wife in the maintenance proceedings. The applicant is resident of village Tambari Vibhag, Tahsil and District Osmanabad and the incident took place at Ambajogai, District Beed. It is lastly prayed to allow the application.

5 The learned APP for the State strongly opposed the application and submitted that the bail application of this applicant was argued before another Bench bearing Anticipatory Bail Application No.1993 of 2023, which was withdrawn, on instructions, when the Court expressed disinclination to grant relief. The learned APP further pointed out the circular dated 8th February, 2024. It is submitted that in view of clause (3) of the said circular, this application has to be decided by the same Bench. It is, therefore, prayed to remove this application from board.

6 The learned APP for the State and the learned counsel assisting to the prosecution pointed out the postmortem report alongwith exhumation of dead body of Jakia Begum and submitted that there are internal injuries to her brain. The learned APP further pointed out that informant's niece Shabana, staff nurse, took out photographs suspecting her throttling, with the help of mobile handset. She also saw the body of the deceased before her last rites. She noted some injuries and signs of assault on her body and therefore, she snapped those photos in her mobile handset. Thereafter, discussion took place with Dr. Parvez, who is relative of the informant. He also pursued from the photographs that there was ligature mark around the neck of the deceased. The learned APP further submitted that the investigation is in progress and it is not yet completed.

7 The learned counsel assisting to the prosecution pointed out the order of the Honourable Supreme Court passed in Special Leave to Appeal No.2420 of 2024, that it is scheduled on 3rd May, 2024. He submitted that histopathological report is part of the evidence and an expert only can make some statement about it. Therefore, it is not helpful to the applicant at this stage. He pointed out the statements of witnesses that this applicant was present at the time of alleged incident. He further pointed out the call details of the applicant that at the relevant time his mobile handset was switched off. This shows that he conspired with the other accused and the murder of Jakia Begum was committed by them. It is lastly prayed to reject the application.

8 The learned counsel for applicant submitted that the circular was issued by the Registrar (Judicial) of this Court dated 8th February, 2024 and earlier to that on 7th February, 2024, the application for anticipatory bail filed by this applicant was withdrawn. Therefore, this Bench can decide this application.

9 This Court has granted bail to one of the accused in this crime by order dated 15th January, 2024. The circular is issued on 8th February, 2024. The application filed by this applicant for anticipatory bail was withdrawn on 7th February, 2024. Thus, one day before

issuance of the said circular, the said order was passed by another Bench dated 7th February, 2024. Therefore, this Bench has jurisdiction to try and decide this bail application.

10 Perused the papers of investigation. The investigating officer is present with histopathological report and call details of the applicant and other accused. Perused the call details. The call details report does not disclose that at the relevant time of alleged incident of murder, this applicant was present in that area at Ambajogai, District Beed or adjacent to it. It is submitted that his mobile phone was switched off. But on that basis inference cannot be drawn that the applicant was involved in this crime. The call details do not show that the applicant and other accused were in contact with each other earlier to the incident and they hatched conspiracy to commit murder of Jakia Begum.

11 As far as histopathological report is concerned, that is not helpful at this stage to infer that there was assault and serious injury was caused to Jakia Begum's head, scalp, skull and brain. However, though nurse Shabana noticed some injuries like ligature mark etc., those are not found during postmortem of Jakia Begum. She also did not file report about it immediately. Her conduct is not natural.

12 The postmortem report, particularly, column No.17 shows that no any external injury noted. As far as internal examination is concerned, there are three findings in column No.19, which are as follows:-

19.	Head–	
	i) Injuries under the scalp, their nature.	Diffuse under scalp contusion noted over the frontal and right occipito-temporal area, reddish in color.
	ii) Skull-Vault and base-Describe fractures, their sites, dimensions, directions, etc.	Intact, no injury.
	iii) Brain- The appearance of its coverings, size, weight and general condition of the organ itself and any found in its examination to be carefully noted (weight M1300 grams F-1275 grams).	Meninges: Intact, no injury. Brain-Intact and edematous. Vessels-dilated and congested. Diffuse subarachnoid hemorrhages noted over both cerebrum and cerebellum, more over right frontal and temporal lobe of cerebrum and cerebellum.

13 As per column No.17 and sub-column (ii) of column No.19, no any injury is caused to the skull. It is found intact. It means that there was no injury sustained to the skull of Jakia Begum. Unless there is any injury to the scalp and skull, no injury can cause to her brain directly. It is admitted fact that the death took place on 21st October, 2023. Last rites were performed on the same day. On the complaint of the informant, the Executive Magistrate conducted exhumation of dead body of Jakia Begum and thereafter, her postmortem was conducted on 27th October, 2023. The postmortem

report was received on 29th October, 2023 and thereafter, the report was lodged on 3rd November, 2023. The dead body of Jakia Begum was under the earth from 21st October, 2023 to 27th October, 2023. Thus, more than 5 days her body was under the earth and its decomposition process must have started. On that basis, some natural developments must have been taken place in her brain i.e. decomposition in the dead body of Jakia Begum must have begun particularly in brain. Therefore, without sustaining any external injury to her scalp and skull, finding noted that diffuse under scalp contusion over the frontal and right occipito-temporal area, reddish in color, are not sufficient to infer assault. Brain will not remain intact for 5 days without any development to infer that there was no scalp contusion and that was due to the assault or impact on the head of Jakia Begum. Whatsoever developments in the brain of Jakia Begum are found and noted in column No.19 of postmortem report after the internal examination during postmortem are only because the dead body was under the earth for 5 days and in the absence of noting of any injury to the scalp and skull of Jakia Begum that finding is not sufficient to infer that it is homicidal death. Further, there is delay for lodging the report.

14 The learned counsel for applicant pointed out from Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology as under:-

“Q.4.58. Discuss subarachnoid haemorrhage in detail from a medicolegal point of view. Include a brief note on autopsy on cases of traumatic basal subarachnoid haemorrhage.

Subarachnoid haemorrhage may be due to natural causes or trauma. Large collections of blood in the subarachnoid space at the base of the brain are more common in natural diseases than in trauma. Traumatic subarachnoid haemorrhage in this region is due to lacerations of the vital arteries, such as the internal carotid, vertebral, and basilar, and is likely to be immediately fatal.”

15 Considering all these aspects and the fact that the applicant was not present at the spot of incident at Ambajogai at the relevant time, it cannot be inferred that the applicant was involved in the alleged crime. As far as statements of witnesses, which are recorded after 1 and ½ month after the incident, that the applicant was there at Ambajogai, is concerned, it is a matter of evidence. However, those statements were not recorded immediately after the alleged incident.

16 The learned counsel assisting to the prosecution though submitted that there is motive that the applicant was willing to eliminate Jakia Begum in order to escape the liability of paying maintenance to her and therefore, conspiracy was hatched, is not acceptable. Further, merely because mobile phone of this applicant was switched off, this

conduct is not sufficient to infer that the applicant was involved in commission of murder of his wife Jakia Begum.

17 Considering all these aspects and the fact that the applicant has roots in the society, trial will take long period, practical investigation is over, custody of the applicant is not necessary and his presence can be secured for the trial, the application deserves to be allowed on stringent conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.413 of 2023, registered with Ambajogai City Police Station, District Beed, for the offences punishable under Sections 302, 120-B and 201 read with 34 of the Indian Penal Code, be released on bail on furnishing personal bond of Rs.50,000/- with surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses, in any manner.
 - b) The applicant shall not tamper with the prosecution evidence, in any manner.
 - c) The applicant shall not enter into Ambajogai city, District Beed, till the conclusion of trial, except the dates fixed by the Court for hearing.
 - d) The applicant shall attend the trial regularly.

18 If breach of any of the above conditions is noticed by the Trial Court, it is at liberty to cancel the bail of this applicant without reference to this Court.

19 The learned counsel assisting to the prosecution submits that the informant wanted to proceed with this order in the Honourable Supreme Court. He seeks stay to the execution of this order for two weeks.

20 The learned counsel for applicant strongly opposed it. She submits that the applicant is behind bars for more than two months. Therefore, the prayer shall not be allowed.

21 Considering the peculiar set of facts of this case and the fact that the applicant is behind bars for more than two months, the prayer of the learned counsel assisting to the prosecution cannot be allowed at this stage. It is rejected accordingly.

[SANJAY A. DESHMUKH, J.]

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