



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1499 OF 2024
IN
CRIMINAL APPEAL NO. 336 OF 2024

Nitin Mangal Patil,
Age : 44 years, Occupation Advocate,
R/o. Village Gartad,
Taluka Chopda, District Jalgaon.

... Applicant
[Orig. Accused]

Versus

State of Maharashtra
Through Chopda City Police Station,
Chopda, Taluka Chopda, District Jalgaon.

... Respondent

.....
Mr. Jitendra Vijay Patil, Advocate for the Applicant.
Mrs. Ashlesha S. Deshmukh, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.04.2024

Pronounced on : 10.04.2024

ORDER :

1. Applicant-original accused no. 13 has pressed into service instant application for dual prayers, i.e. suspension of substantive sentence during pendency of appeal and secondly, grant of bail on account of his conviction recorded by learned Additional Sessions Judge, Amalner in Sessions Case No. 96 of 2022 decided on 01.04.2024.

2. In support of above relief, learned counsel pointed out that Chopda City Police Station chargesheeted in all 13 accused alleging commission of offence under Sections 302, 323, 504 r/w 34 of IPC, Sections 201 and 120-B r/w 34 of IPC and under Sections 3/25 and 7/25 and 27 of the Arms Act. While appraising this Court about the allegations, charge as well as prosecution case in trial court, it is submitted that deceased Varsha and deceased Rakesh had love relations. The same was opposed by family members of Varsha. That, on 12.08.2022, it is alleged by prosecution that main accused Karan @ Kunal along with other co-accused Nilesh, Tushar and Bharat initially abducted deceased Varsha as well as deceased Rakesh and took them towards nala. It is further pointed out that allegations are that juvenile accused Karan @ Kunal fired bullets from country made pistol gunning down Rakesh whereas, Varsha, very sister of juvenile accused was manually strangulated and done to death and hence report was lodged.

3. Learned counsel pointed out that in fact present applicant has no concern with the above alleged affair between both deceased or any of the accused. That applicant is lawyer by profession. According to prosecution, main accused initially telephonically contacted present applicant, and it is further allegation that on his advice and

suggestion, main accused indulged in causing disappearance of incriminating evidence. That, only on such accusations, applicant was chargesheeted for offence under Section 201 IPC and was also held guilty by learned trial Judge for said simplisitor charge.

4. He further fervently submitted that in fact there is no trustworthy reliable evidence except CDR and CCTV footage, which too is unclear to connect present applicant for commission of offence under Section 201 IPC. He elaborated that CDR shows that accused persons had, on their own, contacted applicant, that too after alleged incidence of murder was over. Therefore, prosecution's evidence itself shows that he had no nexus with the occurrence. He was not seen accompanying accused post occurrence and therefore, it was unjust on the part of learned trial Judge to accept the prosecution version as regards to charge under Section 201 IPC against present applicant is concerned.

5. He pointed out that even going by the evidence adduced by the prosecution, essential ingredients for attracting offence under Section 201 r/w 34 of IPC are patently missing, but still learned trial court, without any foundation, has straightaway accepted the case of persecution and has not only recorded guilt but has also sentenced

him to imprisonment for 5 years. That, even otherwise entire case of prosecution is based on circumstantial evidence and prosecution has miserably failed to establish the chain of circumstances to connect applicant.

6. According to learned counsel, there is apparently improper appreciation of evidence as well as law and therefore, exception to the above judgment has been taken by filing appeal bearing Criminal Appeal No. 336 of 2024 which is filed recently and the same would take long time to be heard. Learned counsel submitted that for above reasons, applicant deserves relief of both, suspension of sentence as well as grant of bail. Learned counsel added that present applicant was given the benefit of anticipatory bail immediately after registration of crime by the very trial court by its order dated 25.08.2022.

7. Learned counsel for the accused seeks reliance on the rulings of *Bhagwan Rama Shinde Gosai and Ors. v. State of Gujarat* MANU/SC/0347/1999 ; *Anil Ari v. State of West Bengal* MANU/SC/0148/2009 ; *Suresh Kumar and Ors. v. The State (NCT of Delhi)* MANU/SC/3515/2000 and *State of Karnataka v. Madesha and Ors.* MANU/SC/7745/2007.

8. While opposing the relief, learned APP would point out that a very serious offence has been committed. That case involves double murder. According to learned APP, investigation revealed that main accused were in touch with applicant, who is undisputedly a lawyer. That, not only main accused made phone calls on mobile of applicant, but he also from his side made calls to the accused. Thereafter, main accused have found to be indulged in causing disappearance of incriminating material like blood stained clothes, cartridges. According to learned APP it was also revealed that on applicant's advice, juvenile went and surrendered to save other accused as law protects juveniles from punishment. According to learned APP, therefore, applicant is the brain behind the incident. He is not only charged for offence under Section 201 of IPC but there is also a charge of criminal conspiracy. That, considering the severity of the crime, he prays to refuse relief of suspension as well as grant of bail.

9. Heard at length. Present applicant has put up prayers for suspension of sentence and grant of bail as a consequence of his conviction in Sessions Case No. 96 of 2022 decided on 01.04.2024 resulting into conviction of 13 persons including present applicant. Admittedly, present applicant along with others is held guilty only for offence under Section 201 r/w 34 of IPC. Operative part of the order

of the trial court shows that present applicant is sentenced to suffer imprisonment of 5 years along with other accused, namely, Tushar, Bharat, Bunti, Ananda, Ravindra and Pavan and are also sentenced to pay fine of Rs.1,000/-. There is no further dispute that such judgment and order of conviction is put to challenge vide Criminal Appeal No. 336 of 2024 and the same is subjudice.

10. The emphasis and thrust of learned counsel for the relief is that only charge against present applicant is of 201 IPC which pertains to causing disappearance of evidence. Secondly, evidence in trial court to this extent was unreliable and weak in nature i.e. in the form of only CDR and some CCTV footage. Role attributed by very prosecution is mere advice to cause disappearance. Learned counsel laid much emphasis on the aspect that in fact at his advice, juvenile surrendered with the weapon confessing the murder. That lastly, in trial court, essential ingredients to attract Section 201 IPC were patently missing but still conviction is recorded. It is also pointed out that prior to commencement of trial, applicant was beneficiary of anticipatory bail order.

11. Per contra, resistance put up by learned APP is that being serious offence of double murder, relief as sought may not be granted.

12. Here, this Court is to ascertain whether, while exercising powers under Section 389 of Cr.P.C., which provides for suspension of sentence and grant of bail, the case in hand warrants such relief. Before discussing the entitlement, it is desirable to give a brief account of the settled legal position and essential requirements which are required to be borne in mind while exercising powers under Section 389 of Cr.P.C.

13. Even before discussing the law and judicial precedents, this court considers it necessary to reproduce the essential ingredients for attracting offence under Section 201 of IPC.

Firstly, that an offence has been committed.

Secondly, accused knew or had reasons to believe, commission of such offence.

Thirdly, that with such knowledge or belief, he / she :

- a. caused any evidence of commission of that offence to disappear;

OR

- b. gave any information respecting that offence which he/she knew or believed to be false;
- d. That he did so as aforesaid with intention to screen the offender from legal punishment.

14. The import of powers under Section 389 Cr.P.C. is discussed in numerous cases like *Vikay Kumar v. Narendra* (2002) 9 SCC 364 ; *Ramji Prasad v. Rattan Kumar Jaiswal* (2002) 9 SCC 366 ; *Kishorilal v. Rupa* (2004) 7 SCC 638 ; *Vasant Tukaram Pawar v. State of Maharashtra* (2005) 5 SCC 281.

All these above rulings deal and discuss with the relevant factors which are required to be considered while granting relief under Section 389 Cr.P.C.

The ratio that has been culled out and the principle that is settled is that appellate court, while exercising power under Section 389 Cr.P.C., should consider gravity and seriousness of the offence, nature of accusations, nature of crime committed role and lastly, the desirability of releasing the accused on bail.

In the case of ***Vijay Kumar*** (supra) and **Ramji** (supra), the Hon'ble Apex court held that in cases involving serious crimes, it is only in exceptional cases that the benefit of suspension of sentence can be granted. It is reiterated in ***Vijay Kumar*** (supra) that in cases involving serious offence like murder, court should consider the relevant factors like the nature of accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence and the desirability of releasing accused on bail after held guilty for offence of murder.

15. Keeping in foresight the above settled legal position, here, in the case in hand, admittedly even though present applicant is merely held guilty for offence under Section 201 of IPC and is sentence to suffer imprisonment for 5 years, main charge is of commission of offence under Section 302 of IPC . It is a case of double murder and it has a flavour of honour killing. True it is that case is based on circumstantial evidence. But, learned trial court has accepted the case of prosecution as proved. It transpires that the girl and the boy were shot around or in between 8.30 to 9.30 p.m. Investigating machinery seems to have laid its hands on the mobiles of accused persons and on collection of CDR involvement of present applicant seems to have

come to the light. Learned counsel for applicant pointed out that apparently from CDR also, main accused seems to have developed contact with present applicant somewhat around 10.27 p.m. Onwards and actual incident had already taken place between 8.30 to 9.30 p.m. Therefore, contact developed with applicant is post occurrence.

16. According to prosecution, juvenile in conflict with law surrendered himself with the weapon at or about 11.00 p.m. on 12.08.2022. In between these two to three hours, investigating machinery claims that incriminating material was disposed of. So it amounted to causing disappearance of evidence and hence the charge as against present applicant is concerned. But, charge is said to be by application of Section 34 of IPC. Investigation revealed and even trial court seems to have accepted that present applicant was subscriber of sim card of Jio company. Contact was said to be made by main accused no.3 Tushar with applicant at 10.27 p.m. At 10.47 pm., present applicant himself seems to have made call to accused no.3 Tushar against whom there are allegations that he snatched pistol from juvenile in conflict with law and pumped bullet in the head of deceased. CDR also shows that again at 11.30 p.m. said accused Tushar called back to present applicant. Therefore here, it is emerging that calles were not only made by accused, but after answering calls

from accused, applicant himself developed telephonical contact with main accused.

17. In trial court, prosecution had also put up a case that prior to actual quarrel between deceased Rakesh and juvenile in conflict with law in front of house, a call was said to be made to present applicant and thereafter, all accused had been to hotel of present applicant namely Maharaja hotel. There is CCTV footage at around 10.35 p.m. showing meeting of all accused and precise case of prosecution is that thereafter, juvenile alone went to surrender himself with the weapon.

18. In the light of above material, taking into consideration a case involving honour killing and a case of double murder, obviously it is a grave offence. Taking into account the nature of crime, nature of allegations, manner of commission of crime, nature of charge, in the considered opinion of this Court, it is not desirable to extend the relief of suspension of sentence as well as grant of bail.

19. Perused the judgments relied by learned counsel for appellant in support of relief. Case of ***Bhagwan Rama Shinde Gosai*** (supra) was for commission of offence under Sections 392 and 397 of IPC. Further, in that case the High Court had declined to hear appeal

expeditiously. Here it is not so. In the case of **Anil Ari** (supra), though conviction was for offence under Sections 302, 201 r/w 34 of IPC and powers under Section 389 Cr.P.C. were exercised, the sole consideration for grant of relief was old age of the appellant who was reported to be 70 years of age and specifying that particular reason, relief was granted. In case of **State of Karnataka v. Madesha** (supra) issue was when there was acquittal from main offence, whether conviction for offence under Section 201 of IPC could still stand and Hon'ble Apex Court answered the issue in affirmative. In **Suresh Kumar** (supra) offence was under Section 307 and sentence was of mere three years and therefore appellant therein was given benefit of suspension of sentence and grant of bail.

20. Therefore, here, none of the above rulings have facts identical to the case in hand so as to seek application for said rulings so as to extend benefit here also.

21. Consequently, taking the relevant factors into consideration, which are settled by way of numerous pronouncements, while exercising powers under Section 389 of Cr.P.C., the case in hand is not a fit case to grant relief as prayed. Hence, I proceed to pass the following order:

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]

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