



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

946 BAIL APPLICATION NO. 1525 OF 2024

Shankar Sadashiv Gutte

....Applicant

VERSUS

The State of Maharashtra & another

.....Respondents

.....

Mr. P. P. More, Advocate for Applicant.

Mr. S. P. Sonpawale, APP for the State.

Mr. U. L. Telgaonkar, Advocate for Respondent No. 2.

CORAM : S. G. MEHARE, J.

DATE : 24th SEPTEMBER, 2024.

PER COURT :

1. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the victim.

2. Applicant seeks bail in connection with Crime No. 0455/2024 registered with Vivekanand Chowk Police Station, Tq. & Dist. Latur for the offences punishable under Sections 302, 376(2)(f), 354, 506 read with Section 34 of Indian Penal Code, Sections 5, 6 and 10 of Protection of Children from Sexual Offences Act and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2), 3(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

3. Prosecution case in brief is that the deceased was residing in the hostel run by co-accused. The incident happened on 28.06.2024. The deceased was immediately taken to the hospital. She was treated there, however, on the same day, she was declared dead. Medical College, Latur has performed the Post Mortem on her dead body and prepared the Post Mortem notes and report. The Medical Officer has expressed opinion as to the cause of death was “death due to hemorrhage and shock due to multiple injuries”. The AD was registered. The investigation was done immediately. However, no crime was registered. The Post Mortem was done again on the person of the deceased at Solapur Government Hospital. The Medical Officer performing Post Mortem did not express any another opinion. The team of Solapur Hospital has expressed opinion as to the cause of death was “hamorrhage and shock due to multiple injuries, samples preserved for histopathological examination, genital samples for chemical analysis and routine viscera for chemical analysis”. From these two opinions of two different Post Mortems, it appears that the cause of death is nearly the same. Thereafter the report was lodged on 26.07.2024. The Applicant was arrested on 26.07.2024. Since then he is behind the bar.

4. The learned counsel for the Applicant has vehemently argued that an untoward incident happened in the hostel. The deceased was residing in the hostel, with her sister, run by the mother of the Applicant. She fell down from upper floor. The mother of the Applicant took her to the hospital and treated there. Some catheter treatment was given to her for knowing the exact cause of death. The injuries received were caused to the deceased due to falling down from the height. Before registering the crime, everything was going on smoothly. However, few unions of the caste of the deceased started agitation. They pressurised the investigating agency. They were forcing the police that unless crime is registered they would not take the dead body. Therefore, for their satisfaction, the dead body was sent to the Solapur Government Hospital on 30.06.2024. The union leaders were asking for the ransom to settle the dispute. Their demands were exorbitant and irrational. Since the Applicant's family was running the hostel and wanted to run it peacefully in future, they did not lodge report against them. It was a fact that a few leaders of the union were trying to extract huge amount from the Applicant and his family. When the Applicant denied to pay money, the father of the deceased, who was never taking care of the deceased, came up and lodged the false report.

Thereafter, the crime was registered. Again, statements of few girl students were recorded. Earlier also statements of girl students residing in the hostel were recorded. At that time they had told the truth. However, since there was a pressure on the police machinery, statements of the sister of the injured and one neighbouring women residing in front of the hostel were recorded. The father cooked the story that deceased was complaining against the Applicant and his family members that they were calling her to the office at late hours. He also argued that the police was silent about the statement of the sister of the deceased till the First Information Report was registered. Probably they might have recorded the statement of sister of the deceased while making the enquiry in accidental death case. The Applicant has a specific defence that on the date of the incident, he was not in the hostel. He runs various NGOs and he had been to Pune. He had supplied the ticket of bus and CCTV footage of the office at Pune to the Investigating Officer, to prima facie show that on the alleged date of incident he was not there in the hostel. The police took the documents and those are sent for analysis. He submits that there were no allegations of rape and murder in the First Information Report. It seems that since the illegal extraction of money by the leaders of the union was failed, some new information has been

added. The injuries to the genitals were due to the catheter treatment and there were no signs of sexual assault noticed in the Post Mortem report. The Applicant is lingering in jail for substantial period. Material investigation has been completed. Therefore, he may be granted bail.

5. Learned APP strongly opposed the Application. He would submit that prima facie evidence is against the Applicant that they were calling the victim/deceased at odd hours to the office. He read few statements of witnesses supporting the prosecution case. However, he did not deny the two Post Mortem reports and the intermittent incident of agitation by union. He submits that the defence of *alibi* is a matter of appreciation of evidence. The CCTV footages supplied by the Applicant have been sent for analysis to the laboratory and its report is awaited. Considering the gravity of offence, the Applicant does not deserve bail.

6. The learned counsel for victim has raised an objection that since the offences under Atrocities Act has been registered, this Application is not maintainable as there is remedy of appeal. However, his argument is denied since the Division Bench of this

Court has answered the question whether in a case registered under the Protection of Children from Sexual Offences act as well as Atrocities Act, an Application under Section 439 of Code of Criminal Procedure would lie or appeal would lie. Answer is given that where both acts are applied, Application under Section 439 of Code of Criminal Procedure would be maintainable. He further argued that now a days it is a practice that unless the backward community agitates the crimes are not registered under the Atrocities Act. So it may not be taken otherwise.

7. In this case also, the First Information Report was registered belatedly. However, the fact remains that the First Information Report discloses that on the date of the incident, the mother of the Applicant informed the first informant about the incident. If really he had any complaint against the mother of the Applicant, he had no reason to keep silence. He could have filed the First Information Report on the same day.

8. He further argues that a girl from Scheduled Caste category has been raped and murdered. He refers to the Post Mortem report which has received to him even prior to the filing of the

charge-sheet. However, he does not know the source how the complainant got those papers before filing of the charge-sheet.

9. He also referred to the Post Mortem report of Latur Government Hospital and argued that in column 15 it has been observed that evidence of hymenal tear seen at 5'o clock, 7'o clock and 11'o clock position. Tear margins are healed, no bleeding, no oozing, no redness of inflammation seen. However, other findings are also there. Those were external genitals soiled with blood-tinged fluid. Pubic hairs are curly dense black present in only public area sparing thighs (Tanner stage III). Free hairs found on combing, samples collected and sent for Forensic Science Laboratory. Margins are pale healed, without any evidence of bleeding or inflammation.

10. He further argued that if the Applicant is released on bail, then he may tamper with the prosecution witnesses because all the girl witnesses residing in the hostel are under their control and they may easily win over them. The offence is serious. Investigation is in progress. He also argued like learned APP that the defence of *alibi* is a matter of appreciation of evidence. Such defence cannot be analysed at the stage of considering bail application under Section

439 of Code of Criminal Procedure. He also prays to dismiss the Application.

11. This Court has discussed the conduct of the first informant. Prosecution did not produce the accidental death inquiry papers nor they were able to point out that on the date of the incident the mother of the Applicant made him a phone call. Those documents were necessary because the Applicant has a specific case that he was never taking care of the deceased on the contrary, his mother was looking after them since they were not residing together. Even if we brush aside such arguments, there should be material to corroborate his case. At this juncture, the prosecution could not point out the other possible evidence. Secondly, whether the injuries were caused due to dragging or falling from height could be ascertained from the nature of the injuries. But since this is an application for bail, it would be inappropriate to comment on its probabilities. So far as the fact of catheter treatment is concerned, there was no denial. Multiple hymenal tear may possibly be caused due to catheter treatment. So prima facie, it would be difficult to hold at this juncture that it was a case of rape and murder. Prima facie evidence is produced on record to show that on the date of

incident, the Applicant was not in the hostel. Both learned APP and learned counsel for the victim are correct that it is a matter of appreciation of evidence on merit. But before determining its legality, law does not bar this Court to consider such defence. Admittedly, no weapons have been used in the crime. The Applicant is behind the bar for sufficient time. Papers produced before this Court by the learned APP reveal that the material investigation against the Applicant is completed. Therefore, this Court is of the view that detention of the Applicant would serve no purpose. Hence the following order :-

ORDER

- (i) Application is allowed.
- (ii) Applicant Shankar Sadashiv Gutte be released on furnishing P.B. and S.B. of Rs. 50,000/- (Rs. Fifty Thousand only) with one solvent surety of like amount in connection with Crime No. 0455/2024 for the above offences, on the following conditions :
 - (a) He shall not tamper with the prosecution witnesses.

(b) He shall attend the police station as and when called by the Investigating Officer on written notice, till filing of the charge-sheet.

(c) He shall not enter the hostel premises till the charge-sheet is filed.

(S. G. MEHARE)
Judge

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