



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

994 BAIL APPLICATION NO. 1823 OF 2024

Rukminbai Balasaheb Babar

VERSUS

The State Of Maharashtra And Another

...

Advocate for Applicant : Mr. Salunke Sudarshan J.

APP for Respondents-State: Mr. A.A.A.Khan

...

CORAM : ARUN R. PEDNEKER, J.

Dated : December 12, 2024.

PER COURT :-

1. Heard learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant is seeking bail as she was arrested on 08.05.2024 in connection with FIR No.145/2024, dated 03/05/2024, registered with Palam Police Station, District Parbhani, for the offences punishable under sections 302, 201 ,202, 34 of the Indian Penal Code.
3. It is the case of the prosecution, as reflected from the charge-sheet is that the daughter of the applicant was romantically involved with one Mr. Vikas Kedale, who belonged to a different caste from the applicant. The parents had fixed the marriage of their deceased daughter with some other person and had thus opposed their daughter's relationship with Mr. Vikas Kedale. However, the deceased was firm in her decision to marry Mr. Kedale. At the relevant time, the deceased was 19 years old.

4. The prosecution alleges that on 15/04/2024, the deceased left her house as her parents arranged her marriage with one Mr. Vaibhav Khavale. Engagement ceremony had been performed with Mr. Khavale, and the marriage was scheduled for 02/05/2024. On account of the scheduled marriage, the deceased left home and went to Latur, where she stayed in a rented room. In order to resolve the issue, the parents of the deceased had fixed a meeting at 7.30 pm on 21.04.2024 with the deceased, his boyfriend and his relatives near the market yard at Parali.

5. It is further alleged that at that time in the meeting, Balaji Rupner, Satish Kedale, Balaji Gayal, Manik Lingayat, Balaji Kedale, the deceased and father of deceased were present. During the meeting, the father tried to persuade his daughter (deceased) to return home, stating that her marriage was fixed with another person. However, the deceased insisted on marrying Mr. Vikas Kedale. After some discussion, the father assured her that he would allow her to continue her education and cancel the arranged marriage. He convinced her to return home, and the deceased returned home with her father and other relatives, at their village, Navha. This meeting took place approximately 22 to 25 kilometers from her village.

6. According to the prosecution, the deceased stayed with her father at their home at night on 20/04/2024. It is alleged that between the night of 20/04/2024 and 21/04/2024, the applicant (mother) and her husband (father of the deceased) killed their daughter (Sakshi) at home and thereafter, with the help of other relatives in the village, burned her body in the village crematorium by 3 a.m. on 21/04/2024. This information was allegedly known to people closely associated with the applicant's family. However, no case was initially registered by anyone.

7. A few days later, the police received secret information that the girl (Sakshi) had been killed. Following this, an investigation was initiated, and an FIR was registered on 03/05/2024. The informant was a police officer who received a tip that a 19 year old girl from the Maratha community, who wanted to marry Mr. Vikas Kedale, had been killed by her parents in the night between 20/04/2024 and 21/04/2024 and immediately afterward burned the body. Based on this information, both the applicant and her husband were arrested.

8. During the investigation, the applicant's husband allegedly revealed the location where the deceased was burned. From that

location, remnants of the deceased's body, including a tooth, were recovered. DNA report confirmed the identity of the deceased. Charge-sheet was subsequently filed in the matter, and the applicant remains in custody.

9. The applicant (mother) has filed the present bail application, contending that there is no evidence to establish her involvement in the crime. She argues that the evidence on record only suggests that the deceased was taken by her father from the meeting at Gangakhed(Parali) around 9:00 p.m. on 20/04/2024, possibly toward their village. There is no direct evidence to show that the deceased was brought back to their home or that the applicant was involved in the alleged crime.

10. The applicant further submits that the only evidence available on record relates to a witness (a rickshaw driver) who allegedly saw the deceased's uncle on 23/04/2024 disposing of ashes from the crematorium into the Godavari River. She asserts that this evidence does not establish her involvement in the crime. The recovery of evidence pertains to her husband, and there is no proof linking her to the deceased's death. Based on these contentions, the applicant seeks

bail in the matter.

11. The prosecution evidence available on record in terms of police statements and recovery statement under Section 27 of the Indian Evidence Act is briefly summarized as under:

Witness Mr. Vikas Vaijnath Kedale has stated that on 02.05.2024 the marriage of the deceased was fixed with one Mr. Vaibhav Khavale. At the relevant time, on account of the fact that her marriage was to be performed against her wishes, the deceased had informed that she would go to Latur and accordingly on 15.04.2024 she went to Latur and stayed at Ritesh Lodge. Thereafter she stayed in a rented room at Gangakhed Colony. Since she was staying alone, she could not get a room. As such witness helped her to get accommodation by giving his mobile number. He has further stated that parents of the deceased have fixed a meeting to resolve the matter. Accordingly on 21.04.2024 at 7.30 p.m. near the market road at Parali, a meeting of the parents of the deceased and other family member of the deceased was fixed with her alleged boyfriend and others. After the meeting the father of the deceased had taken the girl with him. On 22.04.2024 at the morning 7 hours Mr. Manik Lingayat informed to the cousin of this witness Mr. Balaji that at 3 p.m. Achyut Babra had informed him on phone that

deceased has been killed by her parents.

12. Similar evidence is given by Kavita Vaijnath Kedale, mother of Vikas Kedale. In addition she informed that on 22.04.2024 she came to know on the basis of general gossip among the people in the village that the deceased was killed by the parents and had cremated her in the village crematorium.

13. Mr. Vaijnath Bapurao Kedale, father of Vikas Kedale has also stated in his evidence that he was present in the meeting which was held on 21.04.2024 with parents of the deceased. He has also stated that after the meeting, the deceased went with her father along with other relatives in a private vehicle to go to her at village Navashev as the father had assured that he would cancel her marriage fixed with another person.

14. The next statement is of Mr. Manik Baburao Lingayat. In his evidence, Manik has stated that he was also present in the meeting held on 21/04/2024. Similar statements are given by Mr. Balaji alias Balu Shrirang Gayal and Mr. Balaji Suresh Rupner.

15. The next evidence is of Shaikh Shadul Shaikh Kasim, auto rickshaw driver. He has stated that on 23.04.2024 at 7.30 p.m. Achyut Dattarao Babar has informed him on phone to come on the bridge of the river. As Achut is regular customer, Shaikh Shadul, went near bridge. There Achyut Babar, Balasaheb Bhimraon Babar, Rajebhau Rakhmaji Babar, Gopal Ashok Shinde came near his auto and put two black bags containing ash in his rickshaw and asked Shaikh Shadul to take the rickshaw towards the river. On being questioned, Achyut informed that this was ash of daughter of the Balasaheb Babar. Thereafter, ashes were thrown from bridge into the river.

16. The next relevant evidence is the recovery panchanama made at the instance of the husband of the applicant (father of the deceased) in presence of panchas. In presence of panchas, father of the deceased has shown readiness to show the place where the girl was cremated. Thereafter, police, panchas went to the spot shown by the father of the deceased where cremation of the deceased took place and at that place some bones, tooth and other articles of the deceased were found. These articles were seized under the panchanama and sent to C.A. for analysis. It is submitted that the DNA samples of these articles matched with the deceased. In the said recovery statement, it is

alleged that the father of the deceased had confessed the crime. So also, the role of the applicant (mother of the deceased) has been revealed in the crime. It is the case of the prosecution that on the said recovery statement under Section 27 of Indian Evidence Act, the father of the deceased, revealed that father of the deceased had killed the deceased by pressing her neck and the applicant (mother of the deceased) caught hold her legs.

17. From the perusal of the evidence it is seen that the deceased ran away from the house and stayed in a rented room, as her marriage was arranged with one of the relatives with whom she did not want to get married. A meeting was fixed between the boyfriend, friends of the deceased and father of the deceased and other family members. It was resolved that the deceased will return with her father and her arranged marriage will be cancelled. On 21.04.2024 at 9 p.m. the deceased proceeded with her father in a private vehicle towards her village at her residence. The evidence on record shows that the deceased had been taken towards the residence of the applicant. The spot panchanama conducted at the residence i.e. at the place of alleged offence shows no incriminating material. Thereafter, it is alleged that by 3 a.m. on 22/04/2024 the deceased was cremated in the crematorium of the

village by the father of deceased along with the help of other relatives.

18. The next evidence relates to the dumping of the ashes by the uncle of the deceased along with the others. The said evidence does not connect the applicant with the crime. The very fact that the deceased was brought at her residence before being killed is nowhere demonstrated by any evidence. There is no independent witness showing that the deceased was brought at her residence. There is no evidence as regard the involvement of the applicant with the crime.

19. The evidence which the prosecution relies upon to connect the applicant with the crime is the statement under section 27 of Indian evidence Act given by the father of the deceased by which recovery of the cremated body parts i.e. tooth etc. of the deceased is made and identity of the deceased was established by virtue of the DNA test. To that extent, there is evidence available against the father of the deceased. However, in the same recovery statement the father of the deceased has made a confessional statement to the police that he has committed an offence along with the applicant and has killed the deceased. However, such a confessional statement relied by the prosecution is not admissible in evidence in view of Section 25 of the

Indian Evidence Act. The confession made to the police officer during the course of the custody of father of the deceased is not admissible in evidence. The only part of evidence that may be available would be that part of the statement made which leads to the discovery of the incriminating material.

20. The Honourable Supreme Court in the case of *Perumal Raja vs. State reported in, AIR 2024 SC 460* as regards the confessional statement of the accused in police custody has held at para no. 19 & 22 as under :

19. The prosecution's case, in the absence of eye witnesses, is based upon circumstantial evidence. As per Section 25 of the Indian Evidence Act, 18728, a confession made to a police officer is prohibited and cannot be admitted in evidence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 279 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person Accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the Accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved. Section 27 of the Evidence Act is based on the doctrine of confirmation by subsequent events - a fact is

actually discovered in consequence of the information given, which results in recovery of a physical object.

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person Accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the Accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant Accused in relation thereto. In *Mohmed Inayatullah v. State of Maharashtra*, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the Section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person Accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the Accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

Considering the above position of law as declared by the Supreme Court that only the part of the confessional statement made under section 27 of the Indian Evidence Act which leads to discovery of

incriminating material is admissible in evidence. The confessional statement made by the accused (father of the deceased) that he along with his wife/applicant killed the deceased Sakshi is not admissible in evidence.

21. The applicant was arrested on 8.5.2024. Since then she is in custody. After completion of investigation charge-sheet is filed. In absence of evidence connecting the applicant with the murder of deceased to indicate that at the relevant time the deceased was brought to her house and that the offence took place in the house of the applicant or that the deceased was last seen with the applicant or was involved in cremating the deceased, I hold that *prima facie* for want of evidence connecting the applicant (mother of the deceased) to the crime, she cannot be said to be involved in the crime and thus deserves bail.

22. In view of the above, the application is allowed in the following terms : -

a] The applicant shall be released on bail in connection with FIR No.145/2024, dated 03/05/2024, registered with Palam Police Station, District Parbhani, for the offences punishable under sections 302, 201 ,202, 34 of the Indian Penal Code, on

furnishing PR bond of Rs.15,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

b] The applicant shall co-operate with the trial Court and she shall attend each and every date, unless exempted by the trial Court.

c] The applicant shall not tamper with the evidence of the prosecution and she shall not influence the witnesses and other persons concerned with the case.

d] The applicant, upon being released on bail, shall place on record of the trial Court the details of her Contact Number and residential address with updates in case of any change.

23. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It is also clarified that the observations made in this order are prima facie and are limited to the disposal of the present bail application. The concerned Court shall proceed further in the matter without being influenced by the observations made hereinabove.

24. The application stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.