

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.331 OF 2024
WITH
INTERIM APPLICATION NO.4739 OF 2023

Sachin Shridhar Navale .. Appellant
Versus
The State of Maharashtra & Anr. .. Respondent

...
Mr.Prashant S. Hagare for the Appellant.
Mr.Ghanasham Jadhav for the Respondent No.2.
Mrs.M.H.Mhatre, A.P.P. for the State/Respondent.
...

CORAM: BHARATI DANGRE, J.
DATED : 24th APRIL, 2024

P.C:-

1. The two co-accused, namely, Sadhana Navale and Mahendra Patole, are enlarged on bail in connection with the C.R., which has invoked the offences punishable under Sections 302, 201, 504, 506 read with Section 34 of the Indian Penal Code (for short, “**IPC**”) and Sections 3(1)(r)(s), 3(2)(va) (v) and Section 6 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocity) Act, 1989 (for short, “**Act of 1989**”) by order dated 01/11/2023.

The relief was granted on analysing the case of the prosecution and on taking note of the apparent loopholes ,

recording that the case was based on circumstantial evidence and as far as Sadhana was concerned, except one circumstance that she made last call to the deceased, which in my considered opinion, did not conclusively establish her guilt, she was released on bail.

Even as far as Mahendra is concerned, he was also held entitled for the relief and it was recorded, that the informant, who is the brother of the deceased, had reported that the deceased had called him on 10/06/2022 at around 8.00 p.m. and informed him that he received a threat to his life, as the members of Navale family were suspecting that he was carrying an affair with Sadhana Navale, the wife of Navnath Navale and he took name of Sachin Navale (present Applicant) and Dada Hagare, who had also abused him in the name of his caste and threatened that he shall be eliminated.

2. On ascertaining the role attributed to the present Applicant-Sachin, who is alleged to have made phone call to the deceased, as per the informant, the prosecution would rely upon the analysis of the CDRs and what is sought to be suggested is that Sachin Navale's location was traced in MIDC, Ekshiv and Kurwali and he is found to be in contact with Dada Hagare-Accused No.4. Even the CDR analysis has revealed that the location of the mobile phone used by him as well as Navnath was tracked at the same place.

Undisputedly, the aforesaid circumstance may form one circumstance in the chain of circumstances, but the law of circumstantial evidence, being well settled, in the case of

Sharad Birdhichand Sarda Vs. State of Maharashtra¹, where fivefold test has been laid down, requiring the prosecution to prove the guilt of the accused based on circumstantial evidence, one circumstance being connected to another and with no scope being left to point out towards the innocence of the accused and all the circumstances when taken together, inevitably point out to the guilt of the accused and none else.

3. The chain of circumstances, which is projected by the prosecution through its charge-sheet, in my considered opinion, do not adhere to the aforesaid test.

Though the counsel for the Respondent No.2 has also referred to two other circumstances, being a witness who has seen the Applicant buying rope on the very same day, this circumstance by itself may not be incriminating, as when I specifically inquired about the material in the charge-sheet to establish, that it is the same rope, which is used either for strangulating or tying the deceased, my attention is invited to the inquest panchnama, which mention that when the body of the deceased was recovered, his hands and legs were tied by the rope. However, the description of the rope has not come on record, making it impossible to assure that it is the same rope, which was purchased by the Applicant.

One another circumstance, as regards the purchase of poison is also irrelevant as in the postmortem report, no poison is detected in the body of the deceased.

1 (1984) 4 SCC 116

4. Though the above two circumstances by themselves may lead to suspicion, since they do not point out to the guilt of the Applicant, it may not lend credence to the case of the prosecution and in any case, it is ultimately for the prosecution to prove those circumstances, when the accused persons will be tried for the offence.

5. The case of the prosecution being based on the circumstantial evidence and while releasing the other two co-accused, I have exhaustively dealt with all the circumstances and in my considered opinion, mere phone calls being made to each other or the presence of the accused together on a particular location by itself, would not be sufficient to prove the Applicant guilty.

6. In light of the aforesaid observations, since the Applicant is arrested on 14/06/2022 and the charge having not been framed and in the wake of insufficiency of the material in the charge-sheet to conclusively establish the guilt of the Applicant, and, since, the Applicant is entitled to parity, with Sadhana and Mahendra, the co-accused, I deem it appropriate to secure his liberty.

Hence, the following order.

: **ORDER** :

(a) The Appeal is allowed.

(b) The impugned Judgment and Order dated 07/07/2023 passed by the learned Addl. District and

Sessions Judge, Baramati in Criminal Bail Application below Exh.116 is Special Case No.258 of 2022, is quashed and set aside.

(c) Appellant-Sachin Shridhar Navale shall be released on bail in Special Case No.258 of 2022, arising out of C.R.No.285 of 2022 registered with Walchandnagar Police Station, on furnishing P.R.Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.

(d) The Appellant shall mark his attendance on first Monday of every month between 10.00 a.m. to 12.00 noon to the concerned police station till framing of charge.

(e) The Appellant shall provide his current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.

(f) The Appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Appellant shall not tamper with evidence.

7. In view of the disposal of the Appeal, Interim Application does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)