

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 708 OF 2024

Savita Rupesh Sabale

... Appellant

Versus

The State of Maharashtra & Anr.

... Respondents

Mr. Akshay Bankapur for the Appellant.

Ms. Rashmi S. Tendulkar, APP for the Respondent No. 1- State.

Mr. Ajay Kaute, PSI Ghoti, Police Station is present.

CORAM : SANDEEP V. MARNE, J.

DATE : 29 JULY 2024.

P.C. :

1) This is an Appeal filed under provisions of 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST Act), challenging the Order dated 3 June 2024 passed by the Additional Sessions Judge-2 Nashik, rejecting the application filed by the Appellant for grant of bail in connection with Crime Register No. 50 of 2024 registered with Ghoti Police Station, Tal. Igatpuri, Dist. Nashik for offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code.

2) At the outset, it must be observed that Appellant is the wife of deceased and she herself belongs to scheduled caste community. In that view

of the matter, though offence under Section 3(2)(v) is also added in the chargesheet, the same would not apply against the Appellant. The first informant is a police officer, who is impleaded as Respondent No.2 in the Appeal. Accordingly, the learned APP has appeared on behalf of Respondent No. 2 as well. In that view of the matter no separate notice is required to be issued to any person, considering the provisions of Section 15-A of the SC & ST Act.

3) The prosecution story is that Appellant is married to the deceased. That Appellant had extra-marital affair with the first Accused Suresh Ganpat Kadu. It is prosecution story that the first Accused committed murder of the deceased alongwith Accused No. 2 - Gorakh Ramdas Kadu on account of the extra-marital affair between Accused No. 1 and the Appellant.

4) I have heard Mr. Bankapur the learned counsel appearing for the Appellant and Ms. Tendulkar the learned APP appearing for the Respondent-State.

5) So far as the role of the Appellant is concerned, she is not accused of participation in actual commission of crime of killing the deceased. In fact CCTV footage relied upon by prosecution itself records presence of Appellant in the hospital at the relevant time when the crime took place. Appellant works as a nurse in the said hospital. The Appellant is sought to be roped in the case essentially on account of allegation of extra-marital affair as well as presence of the first Accused in the hospital after commission of crime. The learned APP has highlighted continuous

telephonic conversation between Appellant and Accused No. 1 on the relevant day before and after commission of the crime. However as of now there appears to be no material on record to infer a conspiracy between Accused No.1 and Appellant and formation of common intention to kill the deceased.

6) So far as allegation of extra-marital affair is concerned, Mr. Bankapur has highlighted the aspect that prosecution alleges that the deceased voluntarily went out alongwith Accused No. 1 for consumption of liquor. According to him, if there was indeed any extra-marital affair between the Appellant and Accused No. 1 and if there was any animosity between Accused No.1 and deceased on account of such affair, the deceased would not have accompanied Accused No. 1 for consumption of liquor. My attention is also drawn to the statement of the daughter of the couple which *prima facie* indicates that though the relationship between the couple was not cordial, alleged extra-marital affair between Appellant and Accused No. 1 was not the reason for frequent fights between them. In fact various statements do indicate that the deceased was addicted to liquor which apparently was the cause for marital discord between the couple.

7) Considering the fact that there is no allegation of Appellant herself participating in the act of killing the deceased, in my view the role ascribed to her cannot be compared with that of Accused Nos. 1 and 2, to whom specific role of killing the deceased is ascribed.

8) What is more relevant to note is the order passed by the learned Sessions Judge on 20 July 2024 enlarging Accused No. 2 - Gorakh Ramdas

Kadu on bail. In fact Accused No. 2 was allegedly last seen with the deceased at the bar where Accused Nos. 1 and 2 and deceased had consumed liquor. As compared to the role played by Accused No. 2, the role ascribed to the Appellant does not appear to be that serious. In my view therefore, the Appellant deserves to be enlarged on bail, considering the position that all the investigations into the crime are complete and chargesheet has been filed on 23 April 2024.

9) Appeal accordingly succeeds and I proceed to pass the following Order:

a) Order dated 3 June 2024 passed by the Additional Sessions Judge-2 to Nashik is set aside.

b) Appellant - Savita Rupesh Sabale arrested in C.R .No. 50 of 2024 for offences punishable under Sections 302, 201 read with 34 of Indian Penal Code registered with Ghoti Police Station, Tal. Igatpuri, Dist. Nashik, shall be released on bail in the sum of Rs.50,000/- with a surety in the like amount subject to the following conditions.

i) That the Appellant shall not tamper with the prosecution evidence in any manner.

ii) Appellant shall furnish identity and address proof of herself and of her two blood relatives while furnishing sureties.

e) Appellant shall attend Trial Court regularly unless exempted from personal appearance.

f) That the Appellant shall make herself available for interrogation by the investigation Officer as and when required under written intimation.

10) With the above Order the Appeal is allowed and disposed of.

[SANDEEP V. MARNE, J.]