

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.1959 OF 2024

Amol Babanrao Hemke

.... Applicant

Versus

The State of Maharashtra
and another

.... Respondents

Mr. Niranjan Mundargi, Advocate a/w. Harideep Singh for the Applicant.

Mr. Vinit A. Kulkarni, APP for the Respondent No.1-State.

Mr. Ashok M. Saraogi, Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th SEPTEMBER, 2024

P.C. :

1. This matter is placed for Speaking to the Minutes of the order dated 11/09/2024, because there is typographical error in clause (i) of the operative part. The figure is mentioned as Rs.50,000/-. However, in words it is mentioned as Rupees Thirty Thousand Only.

2. This needs to be corrected. Therefore, the figure of Rs.50,000/- shall be mentioned in words as Rupees Fifty Thousand Only.

3. The order dated 11/09/2024 be corrected and the corrected order be uploaded.

(SARANG V. KOTWAL, J.)

CORRECTED ORDER DATED 11/09/2024 -

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Amol Babanrao Hemke	 Applicant
Versus	
The State of Maharashtra	
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Mr. Niranjana Mundargi, Advocate a/w. Keral Mehta i/b. Harideep Singh for the Applicant.

Mr. Vinit A. Kulkarni, APP for the Respondent No.1-State.

Mr. Ashok M. Saraogi, Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th SEPTEMBER, 2024

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.5/2024 registered at Kurar Police Station, Mumbai on 4.1.2024 under Sections 306, 376(2)(k)

of IPC, under Sections 4, 6, 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act') and Section 75 of the Juvenile Justice Act. The Applicant was arrested on 5.2.2024. Since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Mr. Niranjana Mundargi, learned counsel for the Applicant, Mr. Vinit Kulkarni, learned APP for the Respondent No.1-State and Mr. Ashok Saraogi, learned counsel for the Respondent No.2.

3. The FIR is lodged by the sister of the deceased in this case. She has stated that the deceased was residing with her mother and another sister at Kandivali (East). The victim had lost her father and brother. Since April, 2020, she was working as a Receptionist in the clinic of the present Applicant, who was a Dentist. She was still studying in a school. Her school timings were between 7.00 a.m. to 11.00 a.m. Thereafter she used to attend the clinic. The FIR mentions that the Applicant used to scold the deceased regarding her studies. He used to scold her for other reasons as well. He used to prohibit her from talking with anybody or

meeting anybody. Therefore, she used to be under pressure. It is alleged that he never used to give her leave. He had prohibited the victim from using mobile phone at the clinic. It is alleged that he used to abuse her. On one occasion, the victim had to attend the police station in connection with her friend's case but the Applicant had told her not to go to the police station and had even beaten her. Apart from these allegations, the FIR mentions serious allegations about sexual harassment. It is alleged in the FIR that the victim had told the informant's other sister that the Applicant used to touch her inappropriately and had established forcible physical relations with her. He had threatened her that he would circulate her video and used to threaten her that he would remove her from the job. Considering her financial difficulty, the victim used to get scared. It is alleged that in November, 2022 the Applicant had shouted at her and had beaten her. In Diwali, 2023, the victim had inadvertently caused damage to some instrument. The Applicant had assaulted her because of that. The FIR thereafter mentions that on 27.12.2023 the informant had gone to reside with her mother and the victim.

The FIR then describes the mental state of the deceased on 28.12.2023. It is described that she was normal. She was discussing about her marriage in future. She wanted to get married in a rich household. She had even selected the ornaments. She had called her uncle and had expressed her desire to visit her native place. In short, she was absolutely normal. The FIR mentions that inadvertently she made a phone call to the Applicant from her new mobile phone number. She got worried that the Applicant would come to know about the new number. At 3.30 p.m., the informant left the victim's house. The victim asked for some money but the informant did not have any money. After that the informant left the house. She reached her house at around 5.00 p.m. At about 6.15 p.m., she received a phone call that the deceased had committed suicide. The informant rushed back to the victim's house. She came to know that the victim had committed suicide. On these allegations, the FIR is lodged.

4. The investigation was carried out. The Applicant was arrested on 5.2.2024, as mentioned earlier. The postmortem notes show that the death was due to hanging.

The viscera was preserved. There were three injuries. One of them was the ligature mark and other two were contusions on the right leg.

5. The Applicant was not in his clinic and had gone to pick up his son from the school when this incident had taken place.

6. After conclusion of the investigation, the charge-sheet was filed. It contains the statements of various witnesses including those of the mother and the other sister, neighbours etc.. At the first instance, the accidental death report was lodged and on 4.1.2024, the FIR was lodged. The statements of the victim's mother and sister were earlier recorded during the investigation of the accidental death report. Those are also forming part of the charge-sheet.

7. Learned counsel appearing for the Applicant made the following submissions :

The Applicant is a Dentist. He does not have criminal antecedents. He has cooperated with the investigation. The Applicant has a small child. The Applicant is roped in as an accused only on suspicion. No offence under

Section 306 of IPC is made out against him and in particular there is no material to show that the Applicant had established forcible physical relations with the victim. The mother of the victim had given her statement initially when the police were investigating the accidental death report and at that point of time she had clearly stated that she had no suspicion against anybody.

8. Learned counsel submitted that if the allegations of sexual harassment and forcible physical relations were true, the sisters of the victim would not have permitted her to attend the Applicant's clinic. He submitted that at the highest it could be said that the Applicant was strict in his clinic and got angry because some expensive instrument was damaged by the victim. That would not mean that his scolding was with the intention that the deceased should commit suicide. He submitted that the charge-sheet contains the statements of the witnesses who had their shops or houses near the clinic of the Applicant and all of them had stated that they did not see any dispute between the Applicant and the deceased. He invited my attention to the statement of a close friend of the

deceased. He submitted that the CDR, included in the charge-sheet, shows telephonic conversations between the victim and said friend on that particulate date of 28.12.2023. There were many calls continuously exchanged between the two till about 4 O'clock in the afternoon. Shortly after which, the victim had committed suicide. He submitted that there were two calls at around 5 O'clock between the Applicant's phone and the mobile phone at the clinic, but, they were of very short duration and they were in connection with the normal instructions given to the victim in the course of her employment. The short duration of those calls would indicate that there could not have been a big quarrel which could have led the deceased to commit suicide.

9. Learned counsel appearing for the first informant – Respondent No.2 submitted that initially the investigation was not satisfactory. In spite of the case of suicide because of the harassment, the investigating agency deliberately registered an accidental death report and recorded statements to suit their purpose. Only because of the public pressure and continuous follow up by the victim's family, the FIR was lodged and then

the statements of the mother and sisters were recorded wherein clear allegations are made against the Applicant.

10. He submitted that there cannot be a witness to the incident of sexual harassment or forcible physical relations. The victim was a young girl and, therefore, because of fear, she could not protect herself. He submitted that the Applicant's medical examination was conducted belatedly on 6.2.2024. At that time, there could not have been any signs of injury on the Applicant. He submitted that the FIR and the statements of mother and sisters of the victim clearly make out a case of abetment to commit suicide and more importantly serious allegations are made under the POCSO Act and regarding commission of rape. Therefore, bail should not be granted to the Applicant.

11. Learned APP supported the submissions made by Shri Saraogi. In addition, learned APP invited my attention to the CDR showing two calls from the Applicant to the mobile phone used in the clinic. The victim was in the clinic at that time. These two calls were at 5.04 p.m. and 5.12 p.m. for the duration of 15 seconds and for shorter duration. Shortly

thereafter, she had committed suicide. Therefore, according to Shri Kulkarni this is a strong incriminating circumstance against the Applicant.

12. I have considered these submissions. The mother of the victim had given her statement on 28.12.2023 i.e. immediately after the incident. She has stated that the deceased had gone to attend the clinic at about 4.00 p.m.. At about 5.30 p.m., the victim's mother was informed by a neighbour that the victim had committed suicide in the Applicant's clinic. Somebody from the crowd had called the police who took the victim down from the iron angle, from which the deceased had hanged herself. Importantly, the mother had further stated in that statement that she had no suspicion or complaint against anybody in respect of death of her daughter. The statement of her mother is important. At that time, the mother knew that the victim had committed suicide in the Applicant's clinic.

13. The other sister of the victim who was residing with the victim and their mother, had given her statement on 29.12.2023. That statement mentions that since 2021, the

victim was working in the Applicant's clinic. Everything was fine till 2023 but after that she used to show her irritation because according to the victim, the Applicant used to scold her and used to beat her sometimes if she committed some mistake. The victim had left the job for some period but since she did not get any other job, again she joined the Applicant's clinic. The same statement mentions that the victim was having close friendship with one "J". They were regularly in touch with each other and the victim had told this sister that she used to like "J". She had also expressed her intention to marry "J". It is alleged in her statement that the Applicant came to know about this relationship and since then he had started showing his irritation. He started beating her. He used to check the victim's mobile phone. The statement further mentions the suicide committed by the victim. Thus, the said statement is recorded prior to lodging of the FIR and there are certain grievances made against the Applicant. However, significantly, even at that time there are no allegations of sexual harassment or forcible physical relations mentioned in

this particular statement. This is another important aspect in the present case.

14. Same allegations are reproduced by the victim's mother in her supplementary statement dated 29.12.2023. All these statements were recorded prior to the registration of the FIR. The allegations of sexual harassment and forcible physical relations were mentioned for the first time in the FIR on 4.1.2024. The mother's supplementary statement, after registration of the FIR, was recorded on 14.1.2024. Even in that statement, there are no allegations of sexual harassment against the Applicant. All these statements mention that the Applicant was showing extra possessiveness and was ill-treating the deceased. But there are no allegations of sexual harassment. In any case, if those allegations were true then the sisters and mother of the victim would not have permitted her to continue to work with the Applicant. The statements of the neighbours Rathod, Patel and Jain specifically mention that they had not seen any quarrel or dispute between the Applicant and the deceased.

15. As rightly submitted by the learned counsel for the Applicant, there were many calls exchanged between the victim and her friend “J” on 28.12.2023 right from 8:20 a.m. till 4.00 p.m.. The CDR shows at least ten such calls of long duration. In the afternoon also there were calls right from 2.48 p.m. upto 4.00 p.m.. These calls are important. Undoubtedly, there are two calls made between the Applicant and the victim but they were of very short duration – one was for 15 seconds and the other was even for a shorter duration.

16. Considering all these aspects, at this stage, it cannot be observed with reasonable assurance that the Applicant had caused harassment to such an extent that the deceased was left with no option but to commit suicide. As discussed earlier, the material in respect of sexual harassment and the forcible physical relations is lacking. The Applicant is a Dentist. He has no other criminal antecedents. He has a small child. His continuous detention in the custody during the entire course of trial is not necessary. The investigation in this case is over and the charge-sheet is already filed.

17. In these circumstances, I am inclined to grant bail to the Applicant. It is made clear that all these observations are made only for the purpose of deciding the bail application. The trial Court shall not be influenced by these observations while deciding the trial at the appropriate stage. Hence, the following order :

ORDER

- (i) In connection with C.R.No.5/2024 registered at Kurar Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall not tamper with the evidence or the witnesses.
- (iii) Criminal Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

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