

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION STAMP NO.3594 OF 2024
IN
CRIMINAL APPEAL NO.852 OF 2018**

Pappu @ Bharat Mahadeo Durge ... Applicant

versus

The State of Maharashtra Respondent

Mr. Satyavrat Joshi, Advocate for the Applicant.

Mr. S. H. Yadav, APP for the Respondent-State.

**CORAM : SARANG V.KOTWAL &
R. M. JOSHI, JJ.**

DATE : 22nd AUGUST, 2024.

P.C. :

1. This is the second time that the applicant has preferred an application for bail pending his appeal. The applicant was convicted by the learned Additional Sessions Judge, Pune, vide the judgment and order dated 6th June 2018 passed in Sessions Case No.699 of 2016. The applicant was convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 and was sentenced to suffer imprisonment for life and to pay fine of Rs.1000/-, and in default, to suffer S.I. for one month.

2. The applicant has preferred Criminal Appeal No. 852 of 2018 before this Court which is already admitted. The applicant had preferred criminal application No.1058 of 2018 in that appeal. A Division Bench of

this Court vide a reasoned order dated 17th July 2018 had rejected his prayer for grant of bail. However, the applicant was given liberty to make a fresh application for his bail if the appeal was not heard for the period of three years from that order. More than three years have passed from the date of that order, therefore, the applicant has preferred this second application for bail. Therefore, considering the previous order, we have entertained this application and we have heard learned counsel for the applicant afresh on the merits of the matter. Learned counsel also pressed the matter on the ground of long incarceration because he was arrested on 10th June 2016 and more than eight years have passed.

3. The prosecution case is that the applicant and the deceased – Rekha were having good relations. The applicant was treating her as his sister. On 9th June 2016, at about 8.30 to 9.00 p.m, they were travelling in a rickshaw of one Somnath Thakar. According to the prosecution case, there was some quarrel between Rekha and the applicant. In that quarrel, the applicant assaulted Rekha with a cutter and slit her throat. The rickshaw driver – Somnath Thakar saw that Rekha was critically injured, therefore, he took Rekha to Alankar Police Chowki. The police officer advised the rickshaw driver to take the injured Rekha to hospital. The applicant was detained and was handed over to superior police officers. The rickshaw driver took Rekha to the hospital, however, she was declared dead. Thereafter, the rickshaw driver – Somnath Thakar's statement was recorded and was treated as FIR. The applicant was

already in the custody of the police. He was arrested and investigation was carried out. The panchanama of the spot was conducted. The cutter found in the rickshaw was seized. The clothes of the applicant were also seized. The articles were sent for CA examination and the post-mortem on the dead body was conducted. The statements of various witnesses were recorded and finally the charge-sheet was filed. The case was committed to the Court of Sessions.

4. During trial, the prosecution examined six witnesses including the rickshaw driver, Rekha's relative, police officers and the medical officer conducting the post-mortem.

5. Learned counsel for the applicant submitted that PW-1 was the rickshaw driver. He had turned hostile and he had not supported the prosecution case. If his deposition is left out of consideration, there is no incriminating against the applicant. He submitted that the manner in which the clothes of the applicant were seized is not above suspicion and therefore, the seizure of applicant's clothes and consequent CA report will have to be ignored. He further submitted that the evidence of PW-2, the relative of deceased Rekha does not take the prosecution case any further. This witness talks only about the possible motive but his evidence is not incriminating. It is vague. He submitted that the manner of the applicant's arrest is also doubtful. If applicant was present in the police station, there was no reason for the police not to have recorded his statement and treated it as an FIR. But since it was not done, it raises

doubt as to whether the applicant was taken to the police station by PW-1 Somnath Thakar. He submitted that considering all these aspects, the applicant be granted bail, particularly when he is in custody from 9th June 2016 and more than eight years have passed since then.

6. Learned APP opposed his submissions. According to him, the evidence of PW-1 cannot be totally ignored because he has admitted the truthfulness of the facts in the statement recorded under Section 164 of the Cr.P.C.. However, according to the learned counsel for the applicant that the statement under Section 164 of the Cr.P.C. was recorded under duress as his rickshaw was already seized by police. Learned APP submitted that recovery of weapon and the applicant's clothes and the corresponding CA report are strong incriminating circumstances against the applicant. He further submits that considering the gravity of the offence, the applicant may not be released on bail; instead, the applicant can apply for expeditious hearing of the appeal; since the appeal is ready for final hearing.

7. We have considered the submissions. There are certain strong circumstances against the present applicant. Though PW-1 was declared hostile, he has described the incident dated 9th June 2016. He has described that one boy and a girl were travelling in his rickshaw and that boy committed serious assault on that girl in his rickshaw itself. He has further deposed that he went to Alankar Police Chowki along with the boy and the girl and thereafter informed about the incident. The police asked

him to take the injured girl to Dinanath Mangeshkar Hospital. He has deposed that he took the girl to the hospital but the boy was with him only till he reached Alankar Police Chowki. After that, his statement was recorded by Warje Malwadi Police Station, Pune. Thus, there was clear attempt to shield the present applicant from the allegations of commission of the offence. However, importantly he has deposed that the contents of the FIR lodged by him were correct. The FIR was produced at Exhibit-12 before the Trial Court. He admitted that the FIR had his signature. He also admitted that the JMFC recorded his statement under Section 164 of Cr.PC. He has further added that the contents of statement recorded by the JMFC were correct. Though he refused to identify the boy as accused person present before the Trial Court, his FIR and the statement recorded under Section 164 of the Cr.PC. clearly implicate the present applicant. In both the statements, he has consistently deposed that the applicant was his friend. He has specifically named the applicant in both the statements and he has described the incident wherein the applicant had assaulted the deceased with a cutter. This witness had scolded the applicant and had taken both of them to the police station. He has stated in his FIR that the police took the applicant in their custody and sent this witness to Dinanath Mangeshkar Hospital with the deceased but the deceased was declared dead in the hospital. Thus, the FIR and the statement recorded under Section 164 of the Cr.PC. given by PW-1 Somnath Thakar are consistent and they are highly incriminating against the said applicant.

Interestingly as mentioned earlier, this witness has admitted that the contents of both the statements were correct. Though learned counsel has submitted that at the time of recording statement under Section 164 of Cr.PC., the police had seized the rickshaw of PW-1 and, therefore, that statement was recorded under duress, the same argument is not available as far as the FIR is concerned. The FIR was taken down immediately and there was no duress at that point as far as PW1 is concerned, therefore, his evidence is strong and incriminating against the present applicant.

8. Apart from that, the evidence of PW4-police head constable - Baban Virnak is important. He was attached to Alankar Police Chowki at the relevant time. He has deposed that one rickshaw driver came to Alankar Police Chowki in his auto rickshaw. When he went near that rickshaw, he saw that one person was standing beside the auto rickshaw and there were bloodstains on his clothes. This witness handed over that person in the custody of the police station officer. He had further identified the applicant as the same person who was in the auto rickshaw and who had bloodstains on his clothes. Thus, there is a direct linking evidence of the applicant's arrest and it corroborates the FIR and sequence of events as per the prosecution case. The Investigating Officer has produced the panchanama of seizure of the applicant's clothes at Exhibit-35. The clothes and the cutter recovered from rickshaw were sent for CA examination. The clothes of the deceased and the clothes of the applicant show the same blood group 'A' on them. This is an

additional strong incriminating circumstance against the present applicant.

9. Considering all these aspects, it is quite clear that the evidence against the applicant is strong and all the circumstances are incriminating. They form a complete chain besides the evidence of PW-1 himself. Though the applicant is in custody since 9th June 2016, the manner of assault is quite cruel. The post-mortem notes show that the cause of death was incised injury over the neck. There were three other injuries on the dead body. The injury to the neck shows that it was of the size 15cms x 4 cms x muscle deep. Her throat was slit. Considering the cruel manner of assault and strong circumstances against the applicant, we are not inclined to grant bail to the applicant pending this appeal. The application is rejected.

(R. M. JOSHI, J.)

(SARANG V. KOTWAL, J.)