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903-APEAL-347-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPEAL NO. 347 OF 2025

Javed Khan Noor Khan

...Appellant

VERSUS

The State Of Maharashtra And Another

...Respondents

...

Mr. N. S. Ghanekar, h/f Mr. Gajanan N. Tirthkar, Advocate for Appellant.

Mr. R. B. Dhaware, APP for Respondent-State.

Mr. Ravindra Narwade (Patil), Advocate (appointed) for Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 23rd JULY 2025.

PC :-

1. Heard Mr. Ghanekar, the learned Advocate for the Appellant, Mr. Dhaware, learned APP for Respondent-State, and Mr. Narwade, learned Advocate (appointed) for respondent No.2.

2. The appellant has approached this Court challenging the order dated 24th April 2025, passed by learned Special Judge (SC & ST Act) Aurangabad, in Special Case No.243 of 2025, rejecting application for regular bail in connection with C.R. No.30/2025 dated 25th January

2025, registered with Khultabad Police Station, for offences punishable under Sections 103(1), 238, 61(2) of the Bhartiya Nyaya Sanhita, and Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused is arrested on 27th January 2025, and since then, he is in jail. Charge-sheet is filed on 24th March 2025.

3. It is the case of the prosecution that on 3rd October 2024, the deceased, Shantabai left her house for Aurangabad to purchase material of business and for other work. However, thereafter, she went missing. She had made last call to the informant namely, Ratnamala, at around 11:15, in the night on 3rd October 2024. Since she was not found, a missing complaint was filed. However, inspite of missing report, there was no trace of the deceased. On 25th January 2025, a dead-body was found in the jurisdiction of Khultabad Police Station. Police Inspector Pawar from the Khultabad Police Station, therefore, on 22nd October 2024, lodged an accidental death report. Since the identity of the victim was in question, her DNA sample was taken. The victim is identified

with the help of DNA report. Thereafter, the police conducted investigation. During the investigation, the police found that on 3rd October 2024, there were 11 calls made between the deceased and present appellant/accused No.1. On that basis, he was apprehended alongwith his brother, accused No.2. The accused No.2 is also behind bar. He is not before this Court at present.

4. The appellant approached the learned Sessions Court by filing application for bail, after filing of the charge-sheet and the same came to be rejected and thus he is before this Court.

5. Mr. Ghanekar, the learned Advocate for the appellant submits that, at the most, the connecting material is CDR wherein it is found that on nine occasions, accused called the deceased and on two occasions it is the deceased, who called the accused. The recovery of the knife is from accused No.2, and not from the accused No.1. As per the case of the prosecution, though the some torn pieces of a saree were found, those are not identified. Daughter stated that the deceased had left with red coloured saree on her person whereas the pieces found were of violate

colour saree. He thus submits that even this does not match. The cause of death is not on record. Nothing could be shown to establish exact cause of death. The opinion is still reserved. He thus submits that the appellant was apprehended only on the basis of suspicion. He also submits that the memorandum Section 27 was recorded after four months of the incident, and thus, no value can be attached to it. The mobile phones allegedly used by the deceased and the accused have not been found. The learned Advocate thus submits that when there any kind of link, there is nothing to keep the present appellant behind bar. He thus prays for allowing the appeal.

6. Learned APP and learned Advocate for Respondent No.2 (appointed), vehemently opposed the appeal. They submit that the deceased was lastly in contact with the present accused. It has been placed on record that she left the house with some amount to Aurangabad for purchasing material for her business as she was as cobbler. There is recovery at the hand of accused No.2, who happens to be brother of accused No.1. Both Advocates submits that offence is

very serious. Learned Advocate for Respondent No.2 also submits that there are threats given to the witnesses. Both the learned Advocate therefore, pray for rejection of the appeal.

7. The present case is based totally on circumstantial evidence. It is weak kind of evidence. The material to connect the present accused with the deceased is only 11 calls on mobile phones. The recovery is not by the present appellant, it is from accused No.2. Except this, there is no material sufficient enough, *prima facie*, to connect the accused with the incident. The learned Sessions Judge, while considering the bail application, has mainly considered that offence is of serious nature and there is apprehension of threats at the hands of accused persons. The application is mainly rejected on CDR report and the circumstances. It is observed that the last location of accused and the deceased is shown at Mitmita. It is considered that there is recovery of some ayurvedic medicine allegedly administered to the deceased. This Court hardly finds that it can be said to be useful in committing offence. This Court finds that the learned Sessions Court has erred in taking this circumstance as

strong circumstance against this accused.

8. Considering above, this Court finds that only on the strength of this material it would not be desirable to keep the appellant behind bar. Investigation is over. For this reason also, this Court finds that custody is not be required. Since all the witnesses are from Beed district, it would be necessary to direct the appellant not to enter the Beed District. Considering all above, this Court inclined to allow the appeal. Hence, the following order:-

ORDER

- (i) Criminal Appeal stands allowed.
- (ii) The impugned order dated 24th April 2025 passed by the learned Special Judge (SC & ST Act) Aurangabad, in Special Case No.243 of 2025 rejecting application for regular bail, is quashed and set aside.
- (iii) The appellant be released on bail in connection with C.R. No.30/2025 dated 25th January 2025 with Khultabad Police Station, for offences punishable under Sections 103(1), 238,

61(2) of the Bhartiya Nyaya Sanhita, and Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing P. R. Bond in the sum of Rs.25,000/-, with one solvent surety/security in the like amount.

(iv) The appellant shall attend the concerned police station as and when called for and co-operate with the investigation.

(v) The appellant shall not tamper with the prosecution evidence and give threats to the informant or any of the prosecution witnesses.

(vi) The appellant shall furnish his contact number and residential address to the Investigating Officer and shall keep the information updated, in case there is any change.

(vii) The appellant shall not enter the Beed district till the trial is over.

(viii) It is made clear that, if any of the conditions are flouted, bail shall be liable to be cancelled.

(ix) Advocate Mr. Narwade is appointed for Respondent No.2.

He shall be entitled to receive fees as per Legal Aid rules.

(x) With this, Criminal Appeal stands disposed off.

[KISHORE C. SANT, J.]