

Bail Application in Atrocity Special Case No. 26/2022

State of Maharashtra

Vs.

Mira Dattatray Kavhale + 1

(CNR NO. MHBU20-000317-2022)

ORDER BELOW EXH. 6

(Passed on this the 22st Day of July, 2022)

01. The present application is filed by applicant namely, Aejaazkhan Shahezadkhan Pathan u/s 439 of the Criminal Procedure Code for regular bail for the offences punishable under section 302 r/w 34 of the Indian Penal Code, 1860 and under Section 3(2)(v) of the prevention of Atrocity Act 1989, in crime No. 60/2022 Police Station Sakharkherda. This is the second application filed by the applicant.

02. In the application, as per written argument Exh. 13 and oral argument it is the case of applicant that the first bail application of applicant is rejected by this Court on 06.05.2022 on the ground that investigation is in progress and there is possibility of tampering of evidence, pressurising the witnesses, committing serious offence in future and absconding of applicant. The investigation is now completed and charge-sheet has been filed. The applicant don't have any criminal background and is having good character. On 16.03.2022 report has been lodged by informant that her son Dattatray Ruplal Kavhale is married and having three children. Prior to 25 days her son Dattatray has caught the

recording of his wife Mira Dattatray Kavhale with the applicant, who were having love relations. Thereafter, Dattatray has left Mira to her parental house. However, after giving understanding to Dattatray, his wife Mira was called back for cohabitation. Dattatray used to consume liquor because of tension. On 14.03.2022 in the evening Dattatray along-with his wife came at Goregaon and stayed at their house. On 15.03.2022 at 09.00 a.m. Dattatray came to the house of informant and having talks with informant regarding the field transaction. Subsequently, Dattatray went along-with his daughter Roshani for her paper at Sakharkherda. At 12.30 to 01.00 p.m. informant went at the house of Dattatray that time she saw that applicant is running. Thereafter, informant went in the house and found that Dattatray was sleeping on cot and his legs were tied with handkerchief and one blanket was lying on his face. When informant went near Dattatray that time his wife Mira told her that he is sleeping don't wake up him. Therefore, informant went to her house. After 2 hours, informant received call of Mira Dattatray Kavhale that Dattatray is not making any movement. Therefore, informant along-with her younger son Ashok went at the house of Dattatray and found that there is mark of hanging on the throat of Dattatray and he was laying on the cot. The informant has rushed Dattatray in the hospital in the Ambulance. When they are on the way of hospital that time she asked Mira regarding the throat marks and tying of both legs of Dattatray. That time Mira told the informant that applicant told her that Dattatray is causing

obstruction in our love relations, therefore, we will finish him. Under influence of liquor when Dattatray came at house at about 12.30 to 01.00 p.m. that time the applicant has tied both legs of Dattatray by handkerchief and Mira with the help of rope has tightened throat of Dattatray. Therefore, Dattatray died on the spot. When the Ambulance reached at Chikhali, the Doctors declared that Dattatray is dead. Therefore, informant has lodged report against the applicant. It is the case of applicant that without any enquiry on 16.03.2022 the applicant was arrested. While joining hands the informant and her son, Ashok have lodged false report against the applicant. The applicant is in MCR till 19.03.2022 and nothing is recovered from the applicant. He has no concern with the crime. He has not committed any murder nor having illicit relations with the wife of Dattatray. The investigation is completed and therefore, physical presence of applicant is not required. On the day of alleged incident at about 11.30 a.m. the applicant was present at Chikhali and it can be noticed from the C.C.T.V. footage. Thereafter, applicant went in his field along-with his neighborer Khillare in bullock-cart. Because on 21.05.2022 there is marriage of the daughter of applicant and for the purpose of preparing food he went in field to collect wood. In collecting the wood his wife, brother and Pralhad Babulkar were helping him. After collecting wood, he came back at 05.30 p.m. at his house. In spite of that without making enquiry he was arrested. There is no evidence against the applicant. The witnesses have not made any allegations

against the applicant. Therefore, Section 302 is not attracted in this crime against applicant and he is entitled for bail. If he is released on bail, then he will not pressurise the witnesses, he will not abscond, he will follow the conditions of bail and without permission he will not leave the jurisdiction of the Court. He is the only earning member of his family. If he is not released on bail, then his family will be destroyed. There is delay of one day in lodging report. The statements of the witnesses were recorded after the delay of near about one month. The statements of the witnesses are inconsistent with the prosecution case. The object and intention is not clear nor stated by any witness. There is no evidence regarding conspiracy under Section 120 of I.P.C. There is no recovery from the applicant. There is no direct evidence. The chain of circumstantial evidence is not completed. The applicant will not abscond. The grounds mentioned in the say of prosecution are false. On the contrary the charge-sheet has been filed and nothing is to be recovered from the applicant. The additional Section 3(2)(v) of Atrocity Act is not attracted. The applicant is ready to give written undertaking that he will not enter in village Goregaon and ready to follow the terms and conditions of bail. He will not pressurise the witness and will not abscond. There is no evidence against the applicant. Therefore, it is just and necessary that he may be released on bail and it is his legal, moral and constitutional right. He is ready to give his attendance to the police station. Therefore, he may be released on bail.

03. The Investigating Officer and learned A.P.P. have filed their say at Exh. 9 and opposed the application. As per say and oral argument it is the case of prosecution that offence is serious. The applicant and wife of Dattatray were having illicit relations. Husband Dattatray was causing obstruction in their illicit relations. Therefore, the applicant and wife of Dattatray namely, Mira have committed murder of Dattatray. The applicant and informant belongs to different religion and they are from same village. If the applicant is released on bail, then he will pressurise the witnesses, the children of deceased and possibility of commission of serious offence in future can not be ruled out. Therefore, application may be rejected.

04. Heard both sides at length. Perused bail application and case diary. From the report dated 16.03.2022 and statement of informant recorded under Section 164 of Cr. P.C., it prima facie appears that the applicant and Mira Dattatray Kavhale who is wife of Dattatray Rupalal Kavhale have illicit relations and the same were come to the knowledge of Dattatray. Therefore, Dattatray has left Mira at her parental house. However, due to understanding given by relatives again she came back at the house of Dattatray. Due to the illicit relations of wife with applicant, Dattatray used to consume liquor. On 15.03.2022 the informant went at the house of Dattatray and noticed that applicant was running. Therefore, she went in the house of Dattatray that time she noticed that both legs of Dattatray were tide with handkerchief and blanket was laying on

his face. When the informant came near Dattatray that time his wife Mira told the informant that he is sleeping don't wake up him. Therefore, informant went to her house. After 2 hours, she has received call of Mirabai that Dattatray is not making any movement. Therefore, the informant along-with her son came at the house of Dattatray and noticed that there are hanging marks on the throat of Dattatray and he was laying on the cot. The informant rushed Dattatray in the hospital in the Ambulance. When they are on the way to hospital that time she asked Mira regarding the throat marks and tying of both legs of Dattatray. That time Mira told the informant that applicant told her that Dattatray is causing obstruction in our love relations therefore, we will finish him. Under influence of liquor when Dattatray came at house at about 12.30 to 01.00 p.m. the applicant has tied both legs of Dattatray by handkerchief and Mira with the help of rope has tightened throat of Dattatray. Therefore, Dattatray died on the spot. When the Ambulance reached at Chikhali, the Doctors declared that Dattatray is dead.

05. From the inquest panchanama it appears that on 15.03.2019 in Rural Hospital Chikhali the inquest panchanama was prepared at 08.00 p.m., on 16.03.2022 as per the request of PSI Chikhali P.M. was effected on the dead body of Dattatray. On 16.03.2022 the dead body was handed over to Ashok.

06. It appears from column No. 3 and 4 of P.M. Report that in the night of 15.03.2022 at 05.45 p.m. till 16.03.2022 at 12.30

p.m. dead body of deceased Dattatray was in the Rural Hospital Chikhali and on 16.03.2022 after 12.30 p.m. the younger son of informant has received dead body of Dattatray. As per the statement recorded u/s 164 of Cr. P.C. on 16.03.2022 they have lodged report in police station and after funeral of Dattatray they went at their house. Thus, the above discussed circumstances justifies the delay in lodging report and it does not create any doubt regarding the report. On this point it will not be out of place to take reference of following case law-

Zahoor and others vs. State of U.P., in Criminal Appeal No. 587 of 1979, Decided on 25.10.1990.

Wherein it was held by Hon'ble Apex Court that "Delay in filing F.I.R. is not itself sufficient to reject prosecution case unless there are clear indications of fabrication. In the instant case (as to Commission of murder by strangulation) there was no inordinate delay. The material particulars mentioned in the F. I. R. as to how offence was committed were substantiated by the testimony of eye-witnesses. Their testimony was corroborated by medical evidence and was found reliable. Thus the delay in filing F.I.R. was of no consequence and the offence was proved beyond reasonable doubt against some of the accused."

07. The statements recorded u/s 164 of Cr. P.C. of the informant and her son Ashok are also to the similar effect of the aforesaid report. From the report and statements prima-facie it appears that there is involvement of the applicant in the crime. Role of the applicant is very clear. Object and intention of the applicant behind the crime is to commit murder of Dattatray, because he was obstacle in between love relations of applicant and the wife of Dattatray. Accordingly, the applicant has played active role in the

commission of murder of Dattatray.

08. As per the report the applicant is alleged to have committed an offence punishable under sections u/s 302 of IPC. Nature and the manner in which the offence is committed by the applicant is very serious. Punishment for the offence punishable under sections 302 of IPC is imprisonment shall be with death, or imprisonment for life and shall also be liable to fine.

09. It is the case of the learned Advocate for applicant that charge-sheet has been filed and therefore, physical presence of the applicant is not required for investigation. Since charge-sheet is filed, there is change in circumstance. It is necessary to point out that mere filing of charge-sheet would not amount to change in circumstances. On the contrary filing of charge-sheet establishes that there is prima-facie case and material against the accused as held by the Hon'ble Apex Court in Virupakshapa Gouda and another Vs. State of Karnataka and another, in criminal appeal No. 601 of 2017 dated 28.03.2017.

10. From the FIR, statement of witnesses recorded under Sections 164 of Cr. P.C. and charge-sheet it prima-facie appears that there is strong evidence against the applicant. The applicant, informant and witnesses are from the same village. In such circumstance, if the applicant is released on bail, then possibility of tampering of evidence, pressurising the witnesses, committing any serious offence in future with informant and absconding of applicant can not be ruled out. Hence, the present application

deserves rejection. Resultantly, following order is passed.

-O R D E R-

Regular Bail application of applicant
Aejazkhan Shahezadkhan Pathan is rejected.

(Dictated and pronounced in open court)

Place: Mehkar
Date : 22.07.2022

(Suraj V. Kendre)
Additional Sessions Judge
Mehkar, Dist. Buldana

Certificate

I affirm that, the contents of this PDF File are same words to words, as per the original Judgment/Order.

Name of Stenographer : Shaikh Imran Abdul Rauf

Court : Additional Sessions Judge Mehkar

Order date : 22.07.2022

Order Signed by the Presiding

Officer on : 22.07.2022