

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO.233/2020  
(LD-VC-CRIMINAL APPEAL No. 498/2020)**

Gopi S/o Ramdas Akkewar  
Aged about 49 years, Occ.: Business,  
R/o Ekori Ward, Chandrapur,  
Tq. & District Chandrapur.

**APPELLANT**

**.....VERSUS.....**

1. The State of Maharashtra,  
Through Police Station Officer,  
Police Station Chandrapur City,  
Tq. & Dist. Chandrapur.

2. Baburao S/o Bhanudas Kale,  
Aged 48 years,  
R/o Marai Patan, Tq. Jivti,  
District Chandrapur.

**RESPONDENTS**

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Shri P. R. Agrawal, counsel for appellant.  
Shri N. B. Jawade, Additional Public Prosecutor for respondents.

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**CORAM : A.S. CHANDURKAR AND AMIT B. BORKAR, JJ.**  
**DATE : 17<sup>TH</sup> JULY, 2020**

**ORAL JUDGMENT (PER : AMIT B. BORKAR, J.)**

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. This is an appeal under Section 14(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 06.04.2020 passed in Misc.Criminal Application No.359 of

2020 together with order dated 01.06.2020 passed in Misc.Criminal Application No.436 of 2020 passed by the learned Additional Sessions Judge, Nagpur, rejecting bail application of the appellant.

3. The facts giving rise to the present appeal are as under :

One Siddharth Baburao Kale, who was staying at Sevalal Hostel, Chandrapur, had committed suicide on 17.01.2020. One Sanjay Jagannath Champalwar reported the incident of suicide to respondent No.1 - Police Station on 18.01.2020 at 12:25 Hours. On the basis of said information, unnatural death was registered by respondent No.1 - Police Station as per Section 174 of the Code of Criminal Procedure vide unnatural death No.02/2020.

4. On 21.01.2020 the father of deceased lodged complaint with respondent No.1-Police Station alleging that on 20.01.2020 at about 3:00 Hours he and his relatives had visited Sevalal Hostel, where they found one notebook in which it was written that the boys of Sevalal Hostel used to tease deceased. The said notebook contained a suicide note naming student residing along with the deceased. In the said note, it was mentioned that in the year 2018, the appellant had physically harassed the deceased. Due to the reason mentioned in the said suicide note, respondent No.1-Police Station lodged First Information Report vide

Crime No.64/2020 against fourteen accused persons for the offence punishable under Sections 377, 306 read with 34 of the Indian Penal Code and Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act).

5. The appellant was arrested in connection with Crime No.64/2020 on 21.01.2020. The respondent No.1-Police Station after completion of investigation had filed a charge-sheet on 19.03.2020. which was registered as Special Case No. 43 of 2020, which is pending before the learned Additional Sessions Judge, Chandrapur.

6. After completion of investigation, the appellant filed application for grant of bail vide Misc. Criminal Application No. 359 of 2020, which is rejected by the learned Additional Sessions Judge, Chandrapur, by impugned order dated 06.04.2020. Thereafter, the appellant filed another application on 08.05.2020 for bail before the learned Sessions Judge, Chandrapur vide Misc. Criminal Application No.436 of 2020, which was also rejected by impugned order dated 01.06.2020.

7. Before filing of the charge-sheet, the appellant had filed Misc. Criminal Application No.161 of 2020 for bail which was rejected by order

dated 12.02.2020. Appeal against order dated 12.02.2020 bearing Criminal Appeal No.137 of 2020 was filed by the appellant, which was allowed to be withdrawn in view of subsequent event of filing of charge-sheet and filing of LD-VC-Criminal Appeal No.498 of 2020 which is present appeal.

8. Mr. P. R. Agrawal, learned counsel appearing for the appellant submitted that the investigation is complete and the charge-sheet is filed and therefore, custodial interrogation of appellant is no longer necessary. It is further submitted that role attributed to the appellant in the suicide note is limited to the event occurred in the year 2018 and there is neither any allegation nor any material to show that the harassment alleged in the suicide note against the appellant was continued after the year 2018. It is also submitted that two of the main accused persons namely Sanjay Jagannath Champalwar and Manoj Namdeo Tathe were released on bail by the learned Additional Sessions Judge, Chandrapur by order dated 28.01.2020. It is further submitted that specific report from the Doctor was called for by the letter dated 24.01.2020. The Medical officer, Department of Forensic Medicine Government Medical College and Hospital, Chandrapur in reply to the said letter has opined that it cannot be ascertained as to whether unnatural sexual act is done with the deceased or not. It is further

submitted that genuineness and handwriting of the deceased are yet to be established as the said hand suicide note is sent for opinion of handwriting expert. The word mentioned in the suicide note is “Sharirik Shoshan”. The said word is vague and does not suggest activity like unnatural sexual act. It is further submitted that the appellant is in jail from 21.01.2020 and therefore, due to filing of charge-sheet he deserves to be released on bail.

9. Mr. N. B. Jawade, learned Additional Public Prosecutor opposed the appeal on the ground that the allegations made against the appellant are serious in nature. It is submitted that there is material on record to show that the appellant has committed unnatural sex with the deceased. There is specific role attributed to the appellant in the suicide note. It is also submitted that there is sufficient material on record to prove ingredients of Sections 4, 6 and 12 of POCSO Act and other offences under Indian Penal Code. Therefore, the learned Additional Public Prosecutor prayed for dismissal of appeal.

10. Having carefully gone into material produced by prosecution and charge-sheet, it prima facie appears that in the suicide note the deceased has ascribed different roles to different accused. In the suicide note, the deceased has used words like rape and intercourse against other

accused persons. The role attributed to the appellant in the suicide note is "Sharirik Shoshan". Prima facie, it appears that incident alleged against the appellant is of the year 2018 and thereafter, there is no material against the appellant that there is any harassment caused by appellant to the deceased which resulted into suicide of deceased. Prima facie considering role attributed to appellant, it appears that the said role does not amount to either sexual assault or penetrative sexual assault. Prima facie, the opinion of Medical Expert at page 66 of the charge-sheet is inconclusive about signs of unnatural sex with the deceased. The charge-sheet is filed and investigation is complete. The appellant is in jail from 21.01.2020. Taking overall view of the matter, the appellant deserves to be released on bail subject to conditions. We therefore, pass following order:

ORDER

- (i) The order dated 06.04.2020 passed in Misc. Cri. Application No.359/2020 and order dated 01.06.2020 passed in Misc. Cri. Appln. No.436/2020 are set aside.
- (ii) The appellant is directed to be released on bail on furnishing P.R. bond of Rs.25,000/ (Rupees Twenty five thousand only) with one surety in the like amount.
- (iii) As a condition for grant of bail, the appellant shall not enter the limits of Chandrapur District till completion of trial, except for attending the trial.

(iv) He shall supply his address and contact numbers to the Investigating Officer, with a copy thereof to be filed before the Sessions Court.

(v) He shall co-operate in the completion of trial.

(vi) He shall not take steps to influence the prosecution witnesses.

11. It is clarified that the observations made in this order are only for deciding the present appeal.

12. Appeal is accordingly allowed and disposed of.

13. The order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

**(AMIT B. BORKAR, J.)**

**(A.S. CHANDURKAR, J.)**