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THE STATE OF MAHARASHTRA

v.

RITESH, S/O VASUDEO WANJARI

MARCH 15, 2001

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[K.T. THOMAS, AND R.P. SETHI, JJ.]

*Code of Criminal Procedure, 1973—Section 439—Bail—Respondent criminally conspired and allegedly murdered his beloved—Trial Court refused to grant bail as it found his complicity in the conspiracy—High Court granted bail without giving the prosecution an opportunity to lead evidence—On appeal Held, High Court not justified in finding at the initial stage that allegation of conspiracy was not established, particularly when the respondent had gone to the place of occurrence—Respondent should have got a verdict of his innocence or involvement in the offence from the court when the final charge-sheet was filed as no exceptional grounds were made out to depart from the established procedure—Order of High Court set aside—Penal Code, 1860—Sections 302, 109, 364, 397, 201 read with 34—Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act—Section 3(1)(xi).*

Respondent had allegedly conspired along with some other persons to murder his beloved, who belonged to a Scheduled Caste. The task of murdering the deceased was accomplished after two unsuccessful attempts. Respondent filed a bail application after he was arrested for the offences under Sections 302, 109, 364, 397, 201 read with Section 34 I.P.C. and Section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Trial Court found his complicity in the criminal conspiracy established and refused bail. High Court allowed the Revision Petition under Section 439 Cr.P.C. and granted bail finding that the allegation of conspiracy was not established. Hence this appeal.

Allowing the appeal, the Court

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**HELD :** 1. Despite observing that the case was based on circumstantial evidence, the High Court did not afford the prosecution an opportunity to lead evidence for establishing the existence of conspiracy and wrongly held that it was difficult to infer the existence of a conspiracy particularly when the respondent had gone to the place of the occurrence.

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The factum that he went there was relied upon by the prosecution as one of

the circumstances connecting the accused with the commission of the crime particularly when it was alleged that from there he used to have telephonic talks with the other accused persons about the alleged conspiracy. In the absence of "exact talks", the High Court was not justified in finding at the initial stage that the allegation of conspiracy was not established. [440-G-H]

2. Once the final charge-sheet has been filed in the trial court, the High Court, under the normal circumstances, should have permitted the respondent to get a verdict of his innocence or involvement from that Court. No exceptional ground was made out to depart from a usual established procedure. [441-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 297 of 2001.

From the Judgment and Order dated 2.8.2000 of the Bombay High Court in Crl. Application No. 926 of 2000.

S.S. Shinde and S.V. Deshpande for the Appellant.

M.R. Daga, P.S. Sontakke and T.S. Arora for the Respondent.

The Judgment of the Court was delivered by

**SETHI, J.** Leave granted.

The respondent was arrested in connection with Crime No.129/99 registered by the Police Station, Goregaon for the offences punishable under Sections 302, 109, 120B, 364, 397, 201 read with Section 34 of the Indian Penal Code and under Section 3(i)(xi) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. He has been granted bail pending trial vide the order impugned in this appeal on the ground that there was no material on record to establish the involvement of the respondent in the commission of the crime and that the accused was not aware of the criminal conspiracy, in execution of which, the deceased Shubhangi was killed.

According to the prosecution, the respondent had a love affair with the deceased Shubhangi. The deceased was insisting for marriage to which the respondent and his mother were not agreeable as the deceased belonged to Scheduled Caste and the respondent belonged to Teli community which is considered as higher caste. The respondent is alleged to have hatched a

A conspiracy to get rid of Shubhangi by eliminating her. In furtherance of the conspiracy and to create evidence in his favour, the respondent went to Baramati on 25th November, 1999. On 11.12.1999 one Ms. Vanita contacted the deceased, who was working at Nagpur, and took her to market on the pretext of making preparations for marriage of the deceased with the respondent. In the evening, the other accused, namely, Ashish, Dinesh and Ajay came in a Maruti Car and picked up the deceased along with Ms. Vanita and took her to Ramtek. A contract killer is alleged to have been hired by the accused to murder the deceased. As the alleged contract killer did not reach on that day, the criminal conspiracy hatched by the accused could not be implemented. Again on 13.12.1999 accused Ms. Vanita took the deceased on the pretext of solemnising her marriage with the respondent. To the misfortune of the accused, the killing was not accomplished even on that day as their car had met with an accident in which Ms. Vanita, accused had sustained some injuries. The task of murdering the deceased was accomplished on 15.12.1999. The deceased was inflicted injuries with knife and stone and was also strangulated. In order to conceal the identity of the victim, the accused persons took away her purse, bag and other articles from the dead body and later on burnt the same.

After his arrest the respondent filed an application for bail in the trial court which was dismissed on 24.4.2000 on finding that his complicity in the criminal conspiracy was established. Being aggrieved by the order of the trial court, the respondent filed a Revision Petition under Section 439 of the Code of Criminal Procedure in the High Court which was allowed vide the impugned order.

For releasing the respondent on bail, the High Court has ventured to refer to the merits of the case and pre-maturely held that there was no material on record to show that the respondent was guilty of conspiracy, in execution of which, Shubhangi, once his beloved, was murdered. Despite observing that the case was based on circumstantial evidence, the High Court did not afford the prosecution an opportunity to lead evidence for establishing the existence of conspiracy and wrongly held that it was difficult to infer the existence of a conspiracy particularly when the respondent had gone to Baramati. The factum of the respondent going to Baramati was relied upon by the prosecution as one of the circumstances connecting the accused with the commission of the crime particularly when it was alleged that while at Baramati he used to have telephonic talks with the other accused persons about the alleged conspiracy. In the absence of "exact talks", the High Court found that the

allegation of conspiracy was not established. The Single Judge of the High Court was not justified, at the initial stage, to observe:

“...it is difficult to say that after the conspiracy was hatched the applicant had been to Baramati and from there he used to have talks with other accused on phone regarding the alleged conspiracy.”

Once the final charge-sheet has been filed in the trial court, the High Court, under the normal circumstances, should have permitted the respondent to get a verdict of his innocence or involvement from that Court under Chapter XVIII of the Code of Criminal Procedure. No exceptional ground has been made out, in the instant case, to depart from such a usual established procedure. The order impugned being contrary to law is liable to be set aside.

Under the circumstances the appeal is allowed and the order impugned is set aside. The respondent would be at liberty to urge grounds, if there is any, for his discharge before the trial court and the trial court shall not be influenced by any of the observations made by us in this order while deciding his plea of bail. We make it clear that no observation made by the High Court in the order impugned shall either be made a ground in favour of the accused for deciding such a plea.

A.Q.

Appeal allowed.