

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1294 OF 2008
IN
CRIMINAL APPEAL NO. 802 OF 2008

Aditi Baldev Sharma ..Applicant
V/s
The State of Maharashtra ..Respondent

Mr.Ashok Mundargi, Sr. Advocate i/b Smt. Revati
Mohite-Dere for the applicant

Mrs. M.M. Deshmukh, APP for the State

**CORAM : S.B.MHASE &
A.A. SAYED JJ.**

DATE : 19TH DECEMBER, 2008

P.C.

1. This is an bail application filed by accused No.1, who is a woman of approximately 24 to 25 years age. She was in love with deceased. Both the accused No.1 and deceased were from Jammu and they had come to Poona for education viz. completing MBA Course. Apart from their love their families had also settled their marriage. But after coming to Poona it appears that accused No.1 fell in love with accused No.2 and she decided to marry with accused No.2. The accused No.1 gave up her education i.e.MBA course in middle and she had gone along with the accused No.2 to Gurgoan. After some days both accused came to Poona on the pretext of withdrawing the amount from the College i.e. for claiming refund of deposits. They stayed in one lodge and on the date of incident on 22nd April, 2007 it appears that accused No.1 called the deceased and they met each other in Macdonald's restaurant. She gave Sai Prasad to the deceased and thereafter parted after chatting

with each other. Thereafter the accused consumed the prasad. However, subsequently there was vomiting and loose motions and he become serious and therefore, he was admitted in Birla Hospital, Poona. Initially Doctor suspected that there was a case of food poisoning but they found that the treatment was not responded to by the deceased. Doctor made inquiries and got the X-ray taken and they found some metallic poison in his stomach. The accused No.1 along with P.W. 4 and 5 also came to the Hospital. There she was asked what prasad was given. Thereafter she handed over prasad packet to P.W.5 and P.W. 5 in turn has handed over the said prasad to Dr. Deshpande. However, Dr. Deshpande was in hurry he kept prasad in drawer next to the deceased patient in the hospital. It further appears that after a period of 10 to 13 days the accused No.1 returned to Poona, at that time also she had the same purse and in the said purse there was again a prasad which was not branded but it was a plastic pouch. That was seized under panchanama by P.W. 28 Pratap Pawar. The same pack was sent to the Chemical Analyser and the C.A. report shows that it was containing Arsenic. But what is to be noted that the packet which was seized

by panchanama was a simple plastic packet without having any monogram but the packet which was examined by the C.A. was having monogram of Vaishnavidevi. P.W.28 was specifically asked in the cross-examination this question and he stated that that "the packets found in the purse was not bearing any stamps. It is not true that I have not seized the purse or the plastic packet from possession of accused No.1". Thus it is noticed that the packet was not having any stamp then how the C.A. report received the packet bearing stamp of Vaishnavidevi. Taking into consideration this evidence the possibility of plantation cannot be ruled out. We also find it impossible that the accused No.1 will kept that packet containing Arsenic in the purse for 15 days so as to hand over it to the police. Apart from that accused No.1 has given the prasad packet to P.W.4 and 5 on the date of incident itself which was given to Dr.Deshpande. The said packet should have been recovered by the investigating officer and should have been sent to C.A. But what we noticed is that in spite of the fact that the witnesses narrated the incident of handing over the packet to Dr. Deshpande, unfortunately the Investigating Officer

has neglected this part of information narrated by the witness and to find out that packet which was given to Dr.Deshpande and get it analysed. However, if these incidents seen together create prima-facie doubt and a cloud of the fact as to whether the accused No.1 has administered the poison to the deceased. The conduct of the accused No.1 in going to the hospital and thereafter coming to Poona repeatedly is not making a story of any guilty person. But on the contrary it prima facie shows that accused No.1 was most probably not knowing it containing an Arsenic. Thus all facts persuade us to grant a bail to accused No.1.

2. Therefore, we suspend the sentence under section 389 of Cr.P.C. and grant bail to the accused. The accused No.1 be released on bail of Rs.30,000/- with a surety in the like amount. The applicant shall not go out of India and she shall submit her passport, if any possessed by her, to the Registrar of this Court till final disposal of the appeal.

(A.A. SAYED, J.)

(S.B. MHASE, J.)