

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.413 OF 2015

Popat Sahebrao Gavhane and Another	... Applicants
vs.	
The State of Maharashtra	... Respondent

Mr. Ritesh Thobde, for the Applicants.
Mr. Arfan Sait, APP for Respondent – State.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JUNE 26, 2015**

P.C.:

. The application is moved for bail. The applicants/accused along with the co-accused are prosecuted for the offences punishable under Sections 302, 201, 364, 363 and 365 read with 34 of the Indian Penal Code in C.R. No. 50 of 2014 registered with Karkambh police station, Solapur.

2. It is the case of the prosecution that one Mudrika Mali who is the mother of deceased Nitin Mali gave missing report on 13th August, 2014 of her son. The deceased Nitin and accused Priyanka got married in the year 2012. However, on 13th July, 2014 Priyanka came to her father's house and then did not return home. So her husband (deceased Nitin) went to the village Bhoose, Tal. Pandharpur to bring her back on 7th August,

2014. Thereafter, Nitin did not return home and he went missing. On 25th August, 2014 mother of the deceased gave complaint against the applicants /accused and co-accused of kidnapping her son as he did not return home nearly for 12 days after 8th August, 2014. The dead body of Nitin was found in a *canal* near village Vadoli on 1st September, 2014. Therefore section 302 of the Indian Penal Code was added in C.R. No. 50 of 2014. The applicants/accused Nos. 1 and 2 i.e. Popat Gavhane and Vibhishan Gavhane are the maternal uncles of co-accused Priyanka. They were arrested on 27th August, 2014 and since then they are in prison. Hence, this application.

3. The learned counsel for the applicants/accused has submitted that there is no evidence against the applicants/accused about the last seen together. He submitted that evidence of last seen together is a very weak piece of evidence and there was a time gap of almost one month between the last seen together and the date on which the dead body of the deceased was found. As per the statements of witnesses, the deceased Nitin was seen on 8th August, 2014 however, his dead body was found on 1st September, 2014. In respect of his submission, the learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of "*Ramreddy Rajeshkhanna Reddy and Another vs. State of A.P.*"¹. He further relied on the

1. 2006 ALL MR (Cri) 1533 (S.C.).

judgment of the Division Bench of this Court in the case of “*The State of Maharashtra vs. Balkrishna Mahadeo Lad*”².

4. The learned counsel for the applicants/accused has further submitted that besides the last seen together, there is no evidence on record. He relied on the statement of Ashok Mali which is recorded on 19th August, 2014 i.e. prior to giving first information report. He submitted that Ashok Mali is the brother of deceased Nitin who has stated that on 8th August, 2014 at around 9.30 a.m. when his parents phoned Nitin, at that time, he told that he had already left to come home and he has covered half distance. He further submitted that there is no motive but only suspicion. He submitted that a dead body was decomposed and there are no marks on the dead body and cause of death is not detected. The applicants/accused are in the prison since September, 2014 and therefore they are entitled to bail.

5. The learned prosecutor opposed the bail application. He relied on the statements of mother Mudrika and two witnesses namely Sadik Kazi and Sachin Khandare on the point of last seen together. He submitted that it is the case of murder and the applicants/accused are not to be bailed out.

2. 2014 ALL MR (Cri) 934.

6. It is the case of circumstantial evidence. The dead body was found in the *canal*. It was in decomposed condition and therefore the cause of death can not be detected. The statement of mother Mudrika dated 13th August, 2014 and first information report dated 25th August, 2014 and her supplementary statement *prima facie* discloses the motive from the material circumstances. So also the conduct of the applicants/accused. It is true that the conviction can not be based on the sole evidence of last seen together. The Hon'ble Supreme Court in the case of *Rajeshkhanna Reddy* has rightly held that on last seen together is a valid circumstance if at all there is a time gap between the date of last seen and the deceased was found dead and Courts should look for some other corroboration. A similar view is taken in the case of *State of Maharashtra vs. Balkrishna Lad* by the Division Bench of this Court. On the background of the principles laid down by the Supreme Court and the Division Bench of this Court, it is necessary to see whether there is other evidence or not. The circumstances vary from case to case. So also the application of principle of last seen together is one of the circumstances and it is not to be considered *prima facie* the only circumstance. As mentioned in the earlier statement of mother Mudrika *prima facie* throwing light on the number of circumstances against the applicants/accused. There are two statements of witnesses Sadik Kazi and Sachin Khandare on the point of last seen together can be one of the

circumstance. The submission of learned counsel that the deceased had been to village Bhose, Tal. Pandharpur along with his wife on the earlier date, it shows that the deceased was having peaceful terms and good time with wife Priyanka and her in laws. In my view, it can not be accepted at this stage, because Priyanka is one of the co-accused in this case.

7. The number of questions can be raised for example, if deceased and Priyanka were on good terms on the earlier date then why Priyanka did not go along with the deceased to her house ? So also when her husband was missing then why there is no search from the family of Priyanka ? As per the statement of Mudrika the family members of Priyanka had quarreled with her when she went to their house. It is the case under Section 302 of the Indian Penal Code. Thus cumulative circumstances *prima facie* shows that it is not the case where accused are entitled to bail.

8. Hence, rejected.

(MRS.MRIDULA BHATKAR, J.)