

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.435 OF 2015

a/w
APPP/308/2015

Yogesh Janale	... Applicant
Vs.	
The State of Maharashtra	... Respondent
And	
Arun Ganpat Hogale	... Intervener

Mr.A.P. Mundargi, Sr.ADvocate i/b Ms.Swapna P. Kode for the Applicant
Ms.Veera Shinde, APP, for Respondent – State
Mr.Sushil Upadhyay i/b A.M. Saraogi for Intervener in APPP/308/2015

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JULY 13, 2015

P.C.:

1. The application is moved for bail. The applicant/accused is prosecuted for the offence punishable under section 302 r/w section 34 of the Indian Penal Code at C.R. No.125 of 013 of Lonavala City police station, Pune. One Arun Ganpat Hogale gave the information to the police on 11.11.2013 that his son Abhishek, aged 27 years, was missing and he expressed suspicion on the applicant/accused Yogesh. Therefore, the offence was registered on 12.11.2013. On query, the police found the dead body of Abhishekh lying below the Express Highway bridge at Walwan. Abhishekh was killed due to strangulation. It is the case of the prosecution that Arun Ganpat Hogale, the complainant and the accused No.1 – Vinod Hogale are distantly related and they had dispute in respect

of an ancestral land and share in the said land. Accused No.1 Vinod Hogale had grievance against the complainant that he had obtained excess share in the said land and, therefore, he alongwith his friends murdered Abhishekh. The applicant/accused was arrested on the same day i.e., on 12.11.2013. Hence, this bail application.

2. The learned Senior Counsel appearing for the applicant/accused read over the statements of the material witnesses and submitted that on that day, i.e., on 11.11.2013, as per the case of the prosecution, at around 19.45 hours, the applicant/accused went to the house of the deceased and took him out. Thereafter again at 22.45 hours, the applicant/accused arrived and took the complainant alongwith him to find out Abhishekh. The learned Senior Counsel submitted that the role of the applicant/accused in this offence is limited even if the allegations against the applicant/accused are taken on face as per the the case of the prosecution. He submitted that on the contrary, the applicant/accused went alongwith the father of the deceased. Rather, it is in search of the deceased. There is no evidence to show that the applicant/accused was involved in the actual act of murder. The evidence collected by the police on the point of actual commission of murder is prima facie does not disclose any specific role of the applicant/accused. The learned Senior Counsel further submitted that other four co-accused Vikrant, Sudhir and others, who went to the house

of the deceased on the same night and met the mother of the deceased, were released on bail by this Court or the Sessions Court. He also submitted that there is no recovery and there is no material insofar as the conspiracy is concerned. In view of this, he submitted that the applicant/accused who is inside since last more than 1½ years, be released on bail.

3. Learned Prosecutor has opposed the application. She submitted that the role of the applicant/accused is very specific. He is involved in the murder of the deceased. This is a case of last seen together and the complainant himself has stated about it. She relied on the postmortem report. The cause of death is strangulation. She also pointed out the injuries on the body of the deceased to submit that it showed that the deceased resisted at the time of his death.

4. It is true that it is a case of last seen together. However, prima facie, there is additional evidence than last seen together against the applicant/accused. At 7.45pm, the applicant/accused took Abhishek alongwith him from his house and then again he came back at 10.45 pm, met the complainant and told him that his son is drunk and his son had called the applicant/accused and therefore he had come to the complainant so that they both can go. The complainant had stated that Abhishek never used to drink and, therefore, he suspected and he went

alongwith him. The statement discloses that the applicant/accused left him in between near the bridge and vanished. When he was called immediately on the same night by the police, then pursuant to the clues, the police found that the body of Abhishekh was lying under the bridge near Walwan. The role attributed to the applicant/accused by the witnesses is very peculiar.

5. Considering the circumstances of the case, I am not inclined to grant bail. Bail application is rejected.

6. Intervention application also stands disposed of.

(MRS.MRIDULA BHATKAR, J.)