

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.494 OF 2016

Deepak Gajanan Patil ... **Applicant**

V/s.

The State of Maharashtra ... Respondent

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Mr.Santosh M. Deshpande, Advocate for the Applicant.

Mrs.Aruna S. Pai, APP for the Respondent/State.

Mr.V.J.Pisal, PSI Azad Maidan Police Station, Mumbai is present.

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CORAM : P. N. DESHMUKH J.

DATED : 19th JULY 2016.

P.C.

1 Heard learned counsel for both the sides at length.

2 Accused involved in Crime No.163 of 2015 registered on 29/07/2015 for the offence punishable under Section 302 of the Indian Penal Code by Azad Maidan Police Station, Mumbai, has sought bail.

3 The learned counsel for the applicant by referring to the copy of charge-sheet and available evidence against the applicant has submitted that the case of prosecution is based on circumstantial evidence and there is no sufficient evidence to

establish link of applicant with the present Crime, who according to the prosecution is involved in commission of murder of his wife, deceased Smita on the count of her insistence with the applicant to arrange for a separate room for their stay.

4 The learned counsel for the applicant submitted that prosecution is relying on the statements of witnesses, who has simply stated that accused has committed murder of his wife, though they are not aware of the relations between the applicant and his wife.

5 According to the applicant, one of the grounds relied by prosecution is of recovery of blood stained knife and his clothes at his instance. However, said evidence is also not sufficient to establish involvement of applicant, in the absence of Investigating Agency not collecting blood group of deceased. It is also contended that no explanation is put forth by prosecution for not recovering knife or blood stained clothes from the spot at the time of effecting panchnama two days prior to the alleged recovery of said article on 31/07/2015 at the instance of applicant.

6 Lastly, applicant has relied upon the police report filed before the learned Sessions Court and has submitted that in this report no objection is raised by prosecution for grant of bail. Vide the said report, it was contended that necessary and appropriate

orders be passed. It is, therefore, prayed that application be allowed on this count alone.

7 The learned Additional Public Prosecutor has opposed the application contending that the trial has already commenced as charge is stated to be framed against the applicant in the last week. It is submitted that though there is no direct evidence against applicant establishing his involvement in committing murder of his wife, there is sufficient circumstantial evidence establishing his involvement in the form of recovery of clothes of accused having blood stains and of knife, as according to the C.A. report blood group of 'A' of deceased is found on the clothes of accused as well as on the knife.

8 Another point relied upon by the prosecution is of statement of witnesses Nallepalli Kandswami Jankiram, who has stated that on the day of incident accused had attended office at 8.00 a.m. and went home at 8.45 a.m. and again came back to office at about 11.45 a.m. and left at 1.15 p.m. and reached in the office along with his son by bringing him from school at about 1.45 p.m. and was in office till 5.30 p.m.

9 With reference to above statement, the learned Additional Public Prosecutor had submitted that from the Call Detail Records of applicant's phone during above intermittent period, his location was found to be that at his house. Accordingly

the application is opposed on this count contending that applicant by visiting his home, has committed murder of his wife, however, I do not find any substance in this contention, as the time of applicant leaving the office and his returning back to office and then of his leaving office at 5.30 p.m. does not tally with the time of incident, which has occurred at 6.00 p.m.

10 Perused the documents filed with the charge-sheet. FIR is lodged by sister-in-law of applicant on 29/07/2015 alleging that after marriage of Smita with applicant near about 13 years before the incident. There were differences between them on the count of shifting to independent room. On this count, complainant appears to have suspected involvement of applicant and also on the count that after the incident, which has occurred at about 6.00 p.m., applicant had failed to inform about the same to complainant or anyone else, and as such, on suspicion, she lodged report against the applicant.

11 The suspicion raised in the mind of complainant reveals on above two counts, however does not found to be sufficient, as according to the statement of Nallepalli Kandswami Jankiram, on the day of incident till 5.30 p.m. applicant was present in the office, which is also the case of prosecution on the basis of CDR of applicant, as aforesaid. The second ground raised by complainant suspecting applicant's involvement is with

reference to strained relations between applicant and his deceased wife on the ground of shifting to some room also does not apparently stand for any reason in view of the statements of independent witnesses namely Sneha Patil, Jaydev Wankhede, Sambhaji Shinde, Jyoti Gite and even Satish Surve husband of complainant, who appear to be knowing deceased as well as applicant since many years prior to incident, and have stated in clear terms that they are not aware about the relations between applicant and deceased, if they were strained or they were indulged in quarrel on any count. It is material to point out that all these witnesses in spite of their statements, as aforesaid, in one line further stated that it is the applicant, who has committed murder of deceased. Said contents of these statements thus, on the fact of it, thus not find to be truthful and only on the basis of said statements, applicant is arrested.

12 During the course of investigation, though according to prosecution, clothes consisting of T-shirt, pant and underwear of applicant and one steel knife was came to be recovered at his instance under seizure panchnama, and though it is the case of prosecution that these articles were found having stained with blood of group 'A', which is of deceased, the learned Additional Public Prosecutor, on obtaining instructions from the Investigating Officer, who is present in the Court, has made a statement that no blood sample of deceased was collected. As such, it is found that

no blood sample of deceased was sent for grouping to C.A. The learned Additional Public Prosecutor, however, submits that as the blood found on the knife was certified to be of group 'A', it can be held that blood group of deceased was also of group 'A'. However, I find no substance in this submission, primarily for the reason that no blood sample of deceased was collected, nor any satisfactory explanation is put forth on this count and as such, merely because blood of Group 'A' is found on knife, it cannot be held that blood group of deceased was same, in the absence of Forensic Science Laboratory Report.

13 Moreover, it is the case of prosecution that even blood group of applicant is of group 'A'. In that view of the matter, clothes of applicant/accused, if is found having stained with blood of group 'A', that does not stand for any reason to consider the same in favour of prosecution.

14 With reference to recovery of said articles at the instance of applicant, there appears much substance when it is contended on behalf of the applicant that clothes and knife came to be seized on 31/07/2015 at the instance of applicant from his house under panchnama from the cupboard, while knife from above the water tank in the bathroom and prior to this, on 29/07/2015 spot panchnama is prepared in respect of house of applicant and there is specific reference in it of cupboard as well

as to overhead tank in the bathroom. However, on that day no such articles were found there and therefore said aspect also raises sufficient doubt in the case of prosecution on the point of recovery of his blood stained clothes and knife at the instance of applicant.

15 Lastly, on perusal of police report filed before the Sessions Court, it is stated therein that necessary order on the bail application filed by the applicant be passed. It is, therefore, apparent that there was no specific objection raised by the prosecution to refusing the bail.

16 Having considering the facts, as aforesaid, application is allowed as per order below:

- (i) Applicant shall be released on bail on his executing personal bond in the sum of Rs.25,000/- with one surety in like amount.
- (ii) Applicant shall mark his presence with Azad Maidan Police Station, Mumbai on every Sunday between 10.00 a.m. to 11.00 a.m. pending trial, and shall attend Sessions Court on each and every date of hearing.
- (iii) He shall not tamper with the witnesses.

(P. N. DESHMUKH J.)