

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1026 of 2017

Mr. Balaji Kavlya Kharatkar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Machhindra A. Patil a/w. Mr. Vijay R. Garad for the applicant.

Mr. Arfan Sait, APP for the respondent-State.

PN V.V. Hole, Turbhe MIDC Police Station, Navi Mumbai present.

CORAM : PRAKASH D. NAIK, J.

DATE : 29 JUNE 2017

P.C. :

1. This is an application for regular bail. The applicant is arrested on 21 November, 2016 in connection with C.R. No.165 of 2016 registered with Turbhe MIDC Police Station, Navi Mumbai for the offence punishable under section 302 of IPC.

2. The prosecution case is that on 28 September, 2016, the police received information that one lady is lying dead at a Pavne Gao and therefore the police proceeded to the said location. It is further alleged that the applicant was present at the said place and he informed that the deceased lady namely Shobha Rathod aged about

45 years was working in Ganesh canteen owned by him she was washing utensils in the said canteen. She has no relatives. He used to provide her food. It is further stated that she was addicted to liquor. ADR was registered vide registration no.95/16 under section 174 of Cr.P.C. Subsequently, the FIR was lodged on the statement of the Assistant Police Inspector Ganesh Bhambre on 29 September, 2016 and the offence was registered under section 302 of IPC. During the course of investigation, the involvement of the applicant and his wife Sangeeta was revealed and therefore they were arrested.

3. The applicant preferred application for bail before the Sessions Court which was rejected on 12 April, 2017. The wife of the applicant Sangita had also preferred an application for bail which has been allowed and she was released on bail by order dated 18th March, 2017 passed by Additional Sessions Judge, Thane.

4. Learned advocate for the applicant submitted that there is no evidence to connect the applicant with the said crime. The prosecution case is based on inferences which is not supported by any cogent evidence to substantiate the involvement of the applicant. He further submitted that the Sessions Court while rejecting the bail application was also influenced by the fact that there were cases

registered against him. He submitted that most of the cases had resulted into acquittal. He further submitted that there is no direct evidence to connect applicant with the said crime. There is no eye witness showing the involvement of the applicant in the crime. Merely on the basis of the allegations that there was some dispute with regard to the payment to the deceased and that she was assaulted frequently by the wife of the applicant, no case is made out to implicate the applicant in the said crime. There is no incriminating evidence against the applicant. The statements of witnesses do not disclose any incriminating evidence against the applicant. The deceased was consuming liquor. She was residing with Ganesh and Suresh for some days. The investigation is completed and chargesheet is filed.

5. Learned APP submitted that this is a planned murder. He pointed the statement of Witness Bajirao Sahane and Afroj Shaikh. The said witness Bajirao have stated that the deceased was working in the hotel of the applicant and wife of the applicant used to assault her frequently. He used to visit applicants hotel for consuming liquor. It is further mentioned that the deceased was not found working in the said hotel when he visited it some where in

September, 2016. On enquiry made by the said witnesses he was informed that she has been removed from the service and she is residing nearby in the premises of Popular Company which is closed down. He further stated that the applicant used to provide biscuits etc. to the deceased. On 27th September, 2016 at about 9.30 pm to 10.00 pm, when the said witness was present at the hotel, the applicant told him and another servant to provide food to her. Hence, they went to the place where the victim was residing at and gave her food. Similar statement is also made by witness Afroj. The statement of Nilesh Waghmare is also similar. Learned APP submits that the statement of the said witness reveals that the deceased was removed from service by the applicant. It also reveals that the wife of the applicant used to assault her frequently. It is also disclosed that at about 9.30 pm to 10.00 pm the applicant had told the witness to visit premises where the deceased is residing to provide food. He submitted that the intention was to find out whether the victim is available at the said place, to accomplish the planned murder. He further submitted that the investigating machinery as collected the CDR which shows that at the relevant time the applicant's presence can be seen in the area where the incident had occurred and thereafter phone was switched off for about one hour. He further

submitted that investigating machinery has collected the CCTV footage which shows that the shutter of the hotel was opened at around 11.00 pm and lights were on and one person was noticed standing near the hotel. The identity of said person could not be revealed. Learned APP submitted that the applicant had initially mislead the investigating authority, and in the light of above circumstances, the inference can be drawn, that the applicant is involved in committing murder of the deceased. He also relied upon the statement of one Mangesh Patil which was recorded under section 164 of Cr. P.C on 20th January, 2017. The statement was recorded on 3 January, 2017. In the said statements, it is stated that on 11 October, 2016 he alongwith his friend Bunti Bhoir had gone to Juhu gao to play gambling. The sons of applicant were also there. At that time, Bunti told Akshay the son of applicant that his father has committed murder. At that time the applicant's son instantly said yes murder is committed. Do whatever you want even iron rod is also inserted. Learned APP submitted that postmortem report indicated that foreign substance was found inserted in the private part of the deceased. On the basis of the aforesaid evidence, it is submitted that the applicant is involved in the said crime.

6. I have perused the FIR and the statement of the witnesses. The witnesses have stated that the wife of the applicant used to assault the deceased frequently. The witnesses also stated that the applicant had requested the witnesses to provide food to the deceased. It is also noticed that the first informant has stated in his statement that immediately when the body of the deceased was located the applicant had informed the police that she was working with the applicant in his hotel. Therefore, question of misleading the investigating authority does not arise. Merely on the basis of the statement of the witnesses that there used to be quarrel between wife of the applicant and the deceased or even the applicant, it cannot be inferred that the applicant is involved in commission of crime. The CCTV footage does not indicate that the applicant was the person who was standing near the hotel. There is no direct evidence to connect the applicant with the crime. The statements of the witnesses on the contrary indicate that the applicant was concerned for the woman and he had asked the witnesses to provide food to her. There is no question of drawing any adverse inference as stated by the learned APP that the applicant wanted to find out whether deceased is available at the said place. From the statement of witness it also appears that at earlier point of time also applicant was sending

his staff to provide eatables to the deceased. The CDR records which is relied upon by the prosecution cannot come at the applicant to the place of murder and that cannot be said to be evidence to link the applicant with the murder. Suspicion however strong may be cannot take place of the evidence. Merely on the basis of inferences the accused cannot be attributed with the charge of murder. The statement of Mangesh Patil which was recorded on 3rd January, 2017 cannot be considered to be a cogent evidence to substantiate the charge of murder against the applicant. The statement was allegedly made by applicants son on 11 October, 2016 and the statement of Mangesh was recorded on 3 January, 2017. The statement of Suresh Satpute indicate that Shobha Rathod (deceased) was residing with him for some days and they had physical relationship. After consuming liquor she had quarrel with him and they parted their ways. Witness Salim Mustakim has stated that Shobha Rathod was removed from services since she had stolen money from cash counter. It is also pointed out from the document which is annexed to this application that the applicant has been acquitted in the serious cases which were registered against the applicant. The wife of the applicant to whom the role of assault was attributed has been released on bail. The Sessions Court while rejecting the application

has observed in order dated 12th April, 2017 that from the statements of witnesses it cannot be gathered that at the relevant night, deceased had been to hotel for work and on account of any non payment of salary, there was any kind of dispute between accused and deceased. There are no eye witnesses to the incident. Entire case is based on circumstances that the deceased was working with the accused and they were not paying salary. There is no material to show regarding last seen together. However, the application was rejected on the basis of antecedents and that applicant tried to misguide police.

In the aforesaid circumstances, I am of the opinion that the case for bail is made out.

ORDER

- (i) Bail Application No.1026 of 2017 is allowed.
- (ii) The applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only.) with one or more sureties in the like amount.
- (iii) The applicant is directed to report to Turbhe MIDC Police

Station once in a week on every Saturday between 11.00 am to 1.00 pm till further orders.

(iv) It is clarified that observations made in this order are only for considering this application for bail.

(v) Application stands disposed of.

[PRAKASH D. NAIK, J.]