

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1522 OF 2017

Santosh Nandkishor Katore

..Applicant.

vs.

The State of Maharashtra

..Respondent.

Mr. Ashok Mundergji, Senior Advocate with Mr.Aniket Nikam, Mr. Jayant Bardeskar, Mr. Piyush Toshniwal, Mr. Harshad Patil i/by Mr. Ashish Satpute for the Applicant.
Smt.Rutuja Ambekar, APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 10th October, 2017.

P.C.

1. This is an application under Section 439 of the Code of Criminal Procedure for bail in CR No.152 of 2006 dated 3.11.2006 registered with Islampur Police Station, District Sangli under Sections 302, 201, 120B read with 34 of the Indian Penal Code.

2. Heard the learned counsel for the applicant, the learned APP and perused the charge sheet annexed to the application.

3. The name of the deceased is Smt. Archana Dagadu Sangle. It is the prosecution case that on 2.11.2006 a dead body of a female was found within the jurisdiction of Islampur Police Station, District Sangli and therefore, present CR No.152 of 2006 was registered. As the police could not unearth the truth behind the crime and could not reach to the final conclusion, the police submitted "A-Summary" report to the Court of

competent jurisdiction. That, initially the father of the deceased namely Dagadu Sangle had lodged Missing Complaint No.323 of 2006 dated 21.11.2006 with the Chaturshrungi Police Station, Pune and during the enquiry of the said crime, police have recorded the statement of the applicant. That the applicant feigned ignorance about the said missing lady namely Smt. Archana Sangle. The record further indicates that, on 26.5.2007 the father of the deceased namely Dagadu Sangle lodged CR No.284/2007 under Section 364 of the Indian Penal Code alleging that some unknown person had abducted his daughter namely Smt. Archana Sangle. That, in the said crime the applicant was arrested by the police however was subsequently released under Section 169 of the Cr.P.C. on the ground of lack of evidence and in the said crime police submitted "A Summary" report in the Court of competent jurisdiction. It is further the prosecution case that the applicant and deceased were having an affair and were staying in a flat which was purchased in their joint names at Baner, Pune. That, the applicant subsequently put forward one lady impersonating as Smt. Archana and transferred the said flat in his own name. It is further alleged that after transfer of the said flat in the name of the applicant he sold the said flat to one Mr. Manoj Chavan. The father of the deceased namely Dagadu Sangle realized that there is something amiss and therefore he lodged CR No.15/2017 under Sections-420, 466,467, 471 read with 34 of the Indian Penal Code alleging that the applicant herein by forging relevant documents has committed the said

offence. The applicant came to be arrested in the said CR No.15/2017 on 17.1.2017 with Khadki Police Station and during the course of his custodial interrogation, he spelt the beans and disclosed to the police in presence of panchas that in the year 2006 he has committed murder of Smt. Archana Sangle in the jurisdiction of District Sangli. The police from Islapur Police Station were informed about the said fact by Khadki Police Station and the present CR No.152/2006 which was kept on dormant file by submitting "A Summary" report was reopened. The applicant came to be arrested on 26.1.2017 in the present crime. The police thereafter carried out the investigation and after completion of investigation have submitted charge sheet on 24.4.2017 in the Court of J.M.F.C. Islampur, District Sangli.

4. As noted earlier the dead body of Archana was found within the jurisdiction of Islampur Police Station, District Sangli on 2.11.2006 and as the police could not apprehend the culprit in the said crime "A Summary" report was submitted in the Court of competent jurisdiction. It is only after the arrest of the applicant in CR No.15 of 2017 registered with Khadki Police Station, Pune on 17.1.2017 the applicant confessed to the police that he has committed the murder of Smt. Archana Sangle in the year 2006 within the jurisdiction of District Sangli.

5. In the present case, prima facie it appears that the prosecution has propounded three main circumstances against the applicant namely i)motive ii) applicant showed the place where he threw

the dead body of the deceased and iii) extra judicial confession made to three witnesses namely Kapil Mahale, Anand Shinde and Vinod Aware.

6. As noted earlier the present case is based on circumstantial evidence.

At this stage a useful reference can be made to the celebrated Judgment of the Apex Court in the case of Hanumant Govind Nargundkar vs. State of M.P. reported in 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri. L. J. 129 wherein it is held as under:-

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused”.

7. It is settled position of law that in a case of circumstantial evidence the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In a case resting on circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to reply. The circumstances so proved should be of conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words the circumstances should be conclusive i.e. accused and the accused alone has committed the crime.

8. In view of the above, settled principles of law, let me consider the circumstances propounded by the prosecution in the present crime.

The motive as alleged against the applicant is in respect to transfer of said flat situated at Baner, Pune. It is alleged that the applicant was interested in getting the said flat transferred in his own name for his personal benefit . That the said flat was initially standing in the name of applicant and deceased Archana jointly and the applicant felt it as a hurdle to transfer the said flat in his own name for his own purpose. The said motive can be derived from the statement of the father of the

deceased namely Dagadu Sangle and the statement of Smt. Sulochana Punde who was the neighbour of the applicant at the said place.

The next circumstance is that the applicant showed the place where he threw the dead body of Archana in the jurisdiction of Sangli District in the year 2006. The said fact/spot was already within the knowledge of the police on the date of lodging of the present crime on 3.11.2006 where after noticing the dead body of an unknown lady, police have registered the crime and had already drawn panchanama of the said place. It is the settled position of law that the place which was already discovered and was within the knowledge of the Investigating agency cannot be again discovered at the instance of the accused under Section 27 of the Evidence Act. Therefore it appears that, the said circumstance put forth by the prosecuting agency is very weak in nature.

This leads me to take into consideration the alleged extra judicial confession made by the applicant to his employees. The statements of the said three witnesses namely Kapil Mahale, Anand Shinde and Vinod Aware are recorded after the arrest of the applicant in the present crime and when the applicant was in police custody and prima facie after a lapse of more than 10 years from the date of registration of the present crime. It further appears that the said witnesses are silent on the fact about the close association of the applicant with them, with whom the applicant thought it fit to disclose the said fact of commission of murder of Smt. Archana. It prima facie further appears that there was no need for

the applicant to confide about the said fact or openly boast of his act. The version of the said witnesses prima facie appears to be unreliable as the said witnesses despite having knowledge of the fact that, the applicant has committed murder of Smt. Archana in a particular car having a particular number kept silent till the applicant is arrested in the present crime. Therefore, according to me the said circumstance of extra judicial confession appears to be doubtful.

7. Thus after analyzing the material available on record, prima facie it appears that except there being a circumstance of strong motive against the applicant, the other material/evidence put forth by the prosecuting agency appears to be weak in nature. The applicant therefore, can be released on bail.

Hence, the following order.

- a) The applicant be released on bail in CR No.152 of 2006 dated 3.11.2006 registered with Islampur Police Station, District Sangli on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount .
- b) After his release from Jail, the applicant shall attend the concerned police station once in month i.e. on every 1st Monday of the month between 11.00 a.m. to 2.00 p.m .
- c) The applicant shall also attend all the dates before the Trial Court.
- d) Any two consecutive defaults in complying with the aforesaid

conditions, shall attract the provisions of cancellation of bail.

e) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

f) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)