

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

BAIL APPLICATION NO. 527 OF 2018

Janu Mallapa Pawar @	
Mehmod Rehmat Khan @ Billa	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. R.V. Gupta for the applicant.
Mrs. G.P. Mulekar, APP for the Respondent-State.
Mr. V.S. Tiwari for the intervenor.

...

**CORAM : PRAKASH D. NAIK, J.
DATE : 18th SEPTEMBER, 2018.**

P.C.

1. This is an application for bail in connection with C.R. No. 86 of 2016 registered with V.B. Nagar Police Station. Initially, the FIR was registered for the offence punishable under Section 365 read with 34 of Indian Penal Code. Subsequently, the charge under Section 302, 328, 364, 365, 201, 34, 120(B) of Indian Penal Code were added.

2. Prosecution case is that on 14th March, 2016, the complainant's son Deepak had left the house and thereafter he did not return home. Missing complaint was lodged at V.B. Nagar

Police Station on 15th March, 2016. It is alleged that two months ago the complainant's son Deepak was threatened by the applicant that if he does not withdraw the complaint filed by him the accused would cause his disappearance. It is further alleged that Deepak was sitting near pipeline alongwith Babu, Landya Raju and Habib. Complainant told him to return home. At that time Babu and Raju told the complainant that he would come and directed her to go home. However, Deepak did not return. Investigation proceeded. Decomposed body of the complainant's son was found. The identity was established on the basis of cloths worn by the deceased Deepak which was identified by the complainant and wife of Deepak. Statement of various persons were recorded. Prosecution case is that deceased was killed by the accused after inducing him to consume drug and threw his body in the area of Khopoli.

3. Applicant was arrested on 16th April, 2016. Several other persons were also arrested. On completing investigation, chargesheet has been filed.

4. Learned counsel for the applicant submitted that applicant has been falsely implicated in this case. There is no strong evidence to show the involvement of the applicant in the crime.

The statement of the witnesses were recorded belatedly. Co-accused has been granted bail by this court. The applicant is in custody since the date of arrest and further detention is not necessary. Recovery is tainted.

5. Learned APP submitted that there is strong evidence against the accused. First informant has stated that there was enmity between applicant and deceased. Applicant had threatened the deceased and warned him to withdraw the complaint filed by him. It is further submitted that applicant had motive to kill the deceased. There is evidence of last seen together. Deceased was made to consume Ganja and intoxicating tablets. He was taken in unconscious condition by the accused and after killing him by strangulation, dead body was thrown in the area of Khopoli. It is further submitted that there is evidence to show that deceased, applicant and other accused were together. Tablets Tranex were purchased by the applicant. There is recovery of rope at the instance of the applicant. Statement of witness Baba Pawar indicate that deceased was in the company of applicant and others in car and he was seen tilting on the shoulder of one of the accused which indicate that he was under the influence of drugs. It is further submitted that there are several cases registered

against the applicant. He is habitual offender.

6. I have perused the document which form part of the chargesheet. First Information Report was registered on 11th April, 2016. Son of the complainant left the house on 14th March, 2016. Missing complaint was lodged on 15th March, 2016. Complaint refers to threat issued by the applicant to deceased Deepak. However, it appears that involvement of accused was suspected while lodging the FIR on 11th April, 2016. While missing complaint was filed, it appears that complainant had not expressed any suspicious about involvement of applicant. Supplementary Statement of the complainant was recorded on 21st April, 2016. In the said statement, she has stated that on 14th March, 2016 she had seen her son Deepak in the company of Babu, Landya Raju and Habib and she told him to return home. However, he did not return home. This fact is disclosed in the supplementary statement and not in the First Information Report dated 11th April, 2016. Statement of Habib Abdul was recorded on 24th April 2016. It was stated that Deepak had consumed Ganja and certain tablets. This witness also stated that Deepak was in company of Babu and Landya Raju. Statement of Jawaharlal Pawar was recorded on 27th April, 2016. He has stated that about one and half months ago he

had handed over Ganja to Landya Raju at the instance of applicant. Both the aforesaid witnesses were residents of Kurla. However, they did not come forward at the earlier point of time when Deepak was missing from 14th March, 2016. Statement of Laxmi Pale was recorded on 19th May, 2016. Learned APP relied upon the said statement. The said witnesses had stated that Babu had purchased beer bottle from her on 14th March, 2016. Statement of Vaijunath Pawar was recorded on 26th April, 2016 who had stated that about one and half month ago he had seen Kishore Landya and Deepak Pawar in inebriated condition. Statement of Baba Mallapa Pawar was recorded on 26th April, 2016. He had stated that there was enmity between applicant and Deepak Pawar and in the past Deepak was assaulted by the accused. Complaint was lodged with the police station. On 15th March, 2016, he had seen applicant getting down from the vehicle and after entering into a lane he returned and sat in the vehicle. He was setting next to the driver. The other accused namely Kishore Jadhav was sitting on the rear side and Deepak Pawar was sitting with his head tilted on the shoulder of Kishore Jadhav. It is pertinent to note that this witness is related to deceased. He is resident of the same vicinity and inspite of that his statement was

recorded on 26th April, 2016. It is also pertinent to note that Kishore Landya @ Kishore Jadhav was granted bail by this Court. Learned APP submitted that report of viscera indicates about consumption of drug. There is alleged recovery of rope at the instance of the applicant. Said recovery was made on 27th April, 2016. Prior to that on 22nd April, 2016, the memorandum statement of the applicant was recorded and he took the police to the place where the body of the deceased was thrown. The rope was allegedly found in the near by area. The body of deceased was recovered on 19th April, 2016 on old Highway area of Khopoli. Co-accused Shekhar Gautam Waghmare @ Babu was granted bail vide Bail Application No. 2603 of 2017 on 7th February, 2018. Accused Mohd. Rafiq Mushtaq Qureshi was granted bail by the Sessions Court vide order dated 17th November, 2017. Co-accused Kishore Jadhav had preferred an application before this Court vide Criminal Bail Application No.920 of 2017. While granting bail to the said accused it was observed by this Court that complainant has not named the said accused being present with Deepak, prior to alleged incident. The statement of Baba Pawar was recorded on 21st April 2016. The Court further observed that Baba was not only related to the deceased but also staying in the same vicinity

where the complainant was residing. Admittedly, said fact was not disclosed by him, either to the complainant or any other person. Kishore Jadhav was granted bail vide order dated 27th September, 2017. Other accused namely Raju Shivaji Jadhav @ Landya Raju was granted bail by this Court vide Bail Application No. 1264 of 2017 by order dated 9th November, 2017. The Court observed that that Kishore Jadhav has been granted bail by this Court and the case of Raju Jadhav is identical and hence on that ground he was granted bail. Thus, on scrutiny of aforesaid statements it is apparent that most of them were recorded belatedly. Learned APP pointed out that there were thirteen cases registered against the applicant. Learned counsel for applicant has tendered compilation of document in the nature of judgments and RTI reports and submitted that applicant has been acquitted in five cases. It is further submitted that in four cases he was not implicated as accused. The first case was registered vide CR No. 12 of 1998 for the offence punishable under Section 324 of IPC, however, learned counsel for the applicant could not give status of the said case. The cases viz. Special L.A.C. No. 225 of 2015, C.R. No. 85 of 2006, C.R. No. 78 of 2006 and C.R. No. 108 of 2006 which were registered with Kurla Police Station as well as case arising out of

C.R. No. 141 of 2015 has resulted in acquittal. It is further submitted that applicant is not concerned with C.R. No. 97 of 1998, C.R. No. 106 of 2014 registered with Andheri Police Station. He is also not concerned with C.R. No. 316 of 1998 and C.R. No. 142 of 1998. All other accused are on bail. The applicant is in custody for about two and half years. Hence, I pass following order.

ORDER

- i) Criminal Bail Application No. 527 of 2018 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 86 of 2016 registered with V.B. Nagar Police Station which is subject matter of Session Case No. 598 of 2016 on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or more sureties in the like amount;
- iii) The applicant shall not enter the jurisdiction of V.B. Nagar Police Station and Kurla Police Station;
- iv) The applicant shall attend hearing of the Court on every date unless exempted by the trial Court;
- v) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses;
- vi) The applicant shall furnish his address to the concerned

police station about place of his residence and shall report the nearest police station once in a month on first Saturday between 10 a.m. to 12 noon;

vi) The application stands disposed off.

Sachidanand
Kuttan Nair

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by Sachidanand
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(PRAKASH D. NAIK, J.)