

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.1385 OF 2018**

Namdev Shankar Patil

**...Applicant**

V/s.

The State of Maharashtra

**...Respondent**

Mr. S.V. Marwadi i/by Khushbu Marwadi, Advocate for the Applicant.

Mr. R.M. Pethe, APP for the Respondent/State.

**CORAM : PRAKASH D. NAIK, J.**

**DATED : 19<sup>th</sup> DECEMBER 2018.**

**P.C. :**

1. This is an application for bail in CR No.I-500/2017 registered with Virar Police Station under Sections 302, 201, 120(B) and 109 of the Indian Penal Code.

2. The case of the prosecution is that the Accused No.1 (applicant) was married with the deceased in 1984. There was matrimonial disputes between them. The deceased wife was seeking maintenance as well as share to be received by the Accused No.1 on his retirement. She had preferred appropriate application before the Court seeking the aforesaid reliefs. The Accused No.1 had conspiracy with other accused and agreed to pay an amount of Rs.2 Lacs to the co-accused. Advance payment

of Rs.1 Lac was made to the Accused No.2. In pursuance to the conspiracy, the Accused No.1 instructed Accused No.5 to get acquainted with the deceased and shown the deceased to the said accused outside the court. It is further alleged that the deceased was called at the bungalow of one Suresh Mhatre and she was killed by strangulation by Accused Nos.3, 4, 5 and 6. Thereafter, the co-accused took the dead-body of the deceased on the motorcycle and while carrying the dead-body it was fallen on the road and by leaving the body on the road, the accused had left the place. The FIR was lodged on 11.09.2017.

3. During the course of investigation, accused were arrested. The applicant was arrested on 12.09.2017. The statements of witnesses were recorded. On completing the investigation charge-sheet has been filed.

4. Learned Counsel for applicant Shri. Marwadi submitted that the entire case of the prosecution is based on circumstantial evidence. However, the prosecution has not been able to establish that the applicant is involved in the crime. The prosecution is relying on the statements of the co-accused to show the involvement of the applicant, which is not admissible. There is no independent evidence to establish the complexity of the applicant in the said crime. Although, it is alleged that the applicant has conspired with the other accused, there is no cogent evidence to support the charge of conspiracy against the applicant. One of the

co-accused has been granted bail by this Court. There is no authentic evidence to establish that the applicant has made any calls by mobile phone and there is no Panchnama of seizure of mobile phones. There is no evidence to show that the phones which were referred to by prosecution belongs to the applicant or the co-accused. It is submitted that the motive attributed for commission of the alleged offence is weak. The application for seeking maintenance and the other reliefs was preferred by the deceased on 20.04.2017. The record indicates that the said application was not served upon the deceased. The learned counsel relied upon the Roznama of the Court proceedings in support of this submission. The alleged incident had occurred on 10.09.2017. The proceedings were not listed for hearing, on 22.08.2017 on which date purportedly the co-accused was shown the deceased outside the Court. The learned counsel relied on the decision of the Hon'ble Supreme Court in the matter of **Balkrishna Tukaram Angre Vs. The State of Maharashtra**<sup>1</sup>. It is submitted that in the said decision, the Hon'ble Apex Court had granted bail considering the fact that the case was based on circumstantial evidence and the accused is in custody for 15 months and the charge-sheet is already filed. The applicant is in custody from the date of arrest. The investigation is completed and the charge-sheet is filed and further detention of the applicant is not warranted. It is, therefore, prayed that the applicant be released on bail.

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1 2018 ALL MR (Cri.) 1388 (S.C.)

5. Learned APP submitted that there are strong circumstances showing the involvement of the applicant in the crime. The applicant had conspired with co-accused to liquidate the deceased wife. There were disputes between the applicant and the deceased. The deceased had preferred an application seeking reliefs against the applicant and being enraged with that the applicant had conspired with others and in connivance with the co-accused, the deceased was murdered. The investigation reveals that for committing the murder, the co-accused were paid money. After the arrest of the co-accused, some amount has been recovered from them. The applicant had a motive to commit murder. He relied upon the proceedings initiated by the applicant and pointed out the reliefs sought by deceased. It is submitted that there were continuous calls between the accused. It is submitted that the co-accused were trying to dispose of the body and while carrying the body of the deceased on a motorcycle, the body fell on the road and thereafter, co-accused ran away from the said place. There is no reason for any other person to commit the murder of the deceased. It is, therefore, submitted that there is strong circumstantial evidence against the applicant. The incident of murder had taken place in the bungalow of one Suresh Mhatre. There is evidence to establish that the deceased was murdered at the instance of applicant.

6. I have perused the charge-sheet and documents produced on record by the prosecution. It is noted that the prosecution is

relying on call record as one of the circumstance to show the involvement of the applicant in the crime. The applicant alleged to have used the mobile phone of his son. The mobile phone which was allegedly used by the co-accused Vandana Pawar stands in the name of one Sandeep Chintaman Nanbudhavli. The record does not include the seizure panchnama of the mobile phones. The charge-sheet does not indicate any investigation conducted by the police to show that the mobile phone belongs to the applicant or the co-accused. Prosecution has not produced such evidence. Marriage between the applicant and deceased was solemnized on 28.02.1984. She had preferred an application for maintenance and the other reliefs on 20.04.2017. The case of the prosecution is that the applicant had conspired to kill his wife. However, except this statement of the co-accused, there is no cogent evidence to establish that the applicant is involved in liquidating the deceased. The allegation that amount was paid to the co-accused is also based on the statement of the accused, which was made during the custodial interrogation. There is no evidence to indicate that the applicant was present at the bungalow at the time of the incident. There is no other legal evidence to show that the applicant was involved in the murder and disposal of the body of the deceased. The prosecution has alleged that the applicant had motive to commit the crime. However, there has to be strong evidence to support the motive. Thus, except suspicion which is based on the statements of the co-accused and the alleged motive, there is no other independent evidence to establish the link between the

murder of the deceased and the applicant. The applicant is in custody from the date of arrest. Investigation is completed and the charge-sheet is already filed, case for grant of bail is made out.

7. Hence, I pass the following order.

**ORDER**

- (i) Criminal Bail Application No.1385 of 2018 is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.I-500/2017 registered with Virar Police Station, which is subject matter of Sessions Case No.1/2018 pending in the Sessions Court, Vasai, on furnishing PR bond in the sum of Rs.25,000/- in the like amount;
- (iii) The applicant shall report the concerned police station once in a month on every first Saturday between 11.00 a.m. and 1.p.. till further orders;
- (iv) The applicant shall not tamper with evidence and shall attend Trial Court proceedings regularly, unless exempted by the Court for any reason;
- (v) The applicant is permitted to furnish cash surety in the sum of Rs.25,000/- for a period of six weeks.
- (vi) It is made clear that the observations made herein are prima facie for deciding the aforesaid application, and the learned judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

**(PRAKASH D. NAIK, J.)**