

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.534 OF 2019

Rakesh Tukaram Koshti	]	... Applicant
Versus		
The State of Maharashtra	]	... Respondent

Mr. Aniket Nikam i/b Mr. Vivek Arote, Advocate for the Applicant.
Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 20 JUNE, 2019.

P. C. :-

1. The applicant is seeking bail in connection with C.R.No.I-208/2017 registered with Panchavati Police Station, Nashik u/sec.302, 201, 364, 120 (B) of I.P.C.

2. The FIR is lodged on 23/05/2017 by Police Constable Ashok Sarode in respect of the murder of one Jalinder Ugalmugle. The said person had gone missing from his house from 01/10/2015 since about 9.00 p.m. The police received secret information that one Avinash Kaulkar and Rohit Kadale had abducted him and then with their associates had committed his murder. Based on this the FIR was lodged.

3. Heard Mr. Aniket Nikam, Ld. Counsel for the Applicant and Mr.Prashant Jadhav, Ld. APP for the State/Respondent.
4. The wife of the deceased had given report about his missing on 04/10/2015. It is mentioned in that report that on 01/10/2015 the deceased had left his house at around 9.00 p.m. without telling anything to any family member. Thereafter, he never returned.
5. The investigation papers show that on 03/10/2015 a dead body in burned condition was found near Ghoti, District Nashik. The postmortem was conducted at the spot. The postmortem notes show that the death was caused because of “Shock due to Respiratory arrest, Cardiac arrest and Brain haemorrhage”. The body had suffered burn injuries as well. The DNA test shows that the dead body was that of the deceased Jalinder himself.
6. For about one and half years from October 2015, there was hardly any progress in the case. However, as mentioned earlier on secret information the investigation commenced by lodging the FIR on 23/05/2017.

7. During investigation the police recorded the statement of one Akshay Burade. His statement was recorded on 06/06/2017. He had stated that he used to give his car to the present applicant on some occasions, and on 01/10/2015, at the instance of the applicant, this car was given to one Sham Mahajan. Incidentally, said Sham Mahajan is also one of the accused in this case. Panchanama of this car was conducted on 29/05/2017 and the prosecution case is that some samples containing blood stains were removed from the below back seat of the car and from dicky. It is the prosecution case that Chemical Analysis report shows that the blood group of the samples and that of the deceased was the same. The investigating agency relies heavily on these circumstances against the present applicant.

8. It is also the case of the investigating agency that the present applicant had purchased petrol in a bottle from a nearby petrol pump from where the dead body was recovered. The police had seized some hard discs to find out if this was recorded on any CCTV footage. However, in the charge-sheet there is nothing to connect this aspect with the present applicant. The statement of the employee of the petrol pump also does not help the investigating agency, because,

firstly it was recorded after more than one and half years and secondly because the applicant was taken to him by the police. Even that statement does not show that he had identified the applicant as the person who had purchased the petrol. In that case he would be in a position to fix the identity. As per his statement petrol was regularly dispatched in bottle in case of needy persons. The police have also recorded statement of the applicant u/sec. 27 of the Indian Evidence Act wherein the applicant is supposed to have shown the petrol pump from where the petrol was purchased. However, since nothing was discovered pursuant to his statement, that submission also does not fulfill the requirement of Section 27 of the Indian Evidence Act.

9. Mr. Nikam, Ld. Counsel for the applicant relied on the order passed by this court on 27/08/2018 in BA No.1374/18 in case of co-accused Sham Laxman Mahajan. By the said order the said co-accused was granted bail. The evidence against him was almost similar to that of the present applicant. In fact, he is the person who had taken the car from Akshay Borde. There is no motive alleged either against Sham Mahajan or the present applicant. It is also rather difficult to believe that for two years the blood stains could not be

noticed by the person in whose custody the car was or that suddenly after two years the blood stains would be available in the car. This aspect has been taken into consideration by this court while granting bail to the co-accused Sham Mahajan.

10. Considering that there is hardly any strong incriminating circumstances against the present applicant and also considering the fact that the co-accused against whom the evidence is almost similar is granted bail, I am inclined to grant bail to the present applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.I-208/2017 registered with Panchavati Police Station, Nashik on his executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)