

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1665 OF 2019

Somnath Vithhal Waghmare

....Applicant

v/s.

The State of Maharashtra

....Respondent

Mr. Rajiv Patil, Senior Advocate i/by. Mr. Hasan Patel, for the applicant.

Shri. Avinash Khamkhedkar, APP for the State.

Mr. S.H. Kharmate, Tokawadi Police Station present.

CORAM : SANDEEP K. SHINDE, J.**13TH January, 2020.****P.C. :**

1. Heard.

2. The applicant seeks his enlargement on bail in Crime No. 107/2017 registered with Tokawadi Police Station, Thane for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code.

3. Deceased, Sangeeta was ordinary resident of Karnataka State. Applicant is son in law of Anappa. It appears deceased had travelled to Mumbai on 21st September, 2017 at Anappa's place at Goregaon. It appears, she had gone to receive compensation in a redevelopment project and therefore she had visited Mumbai. It appears, there was a dispute in respect of the property which had gone into redevelopment project.

4. On 24th September, 2017, Police Patil of Village-Ide, Taluka-Murbad reported to the police that a dead body of a woman was found lying at Village-Indegaon. Thereupon, the offence came to be registered against unknown persons. The post-mortem report shows, deceased had suffered head injuries whereby the probable cause of death was reported as "evidence of head injury with ligature mark around neck, however, final opinion reserved for necessary examination reports." In column no.17, two injuries are noted; (i) contused lacerated injury present over left frontotemporal region (ii) ligature mark around neck.

5. In the investigation, statement of one, Vishal Bhalchandra Talkar was recorded. In his statement under Section 161 Criminal Procedure Code, he stated that on 23rd September, 2017 applicant had taken his Qualis Car on the pretext that, he had to visit Bhiwandi. Accordingly, car was handed over to the applicant who had promised him to return the car at 1.30 a.m. He further stated, at 0.37 hrs, he called the applicant on his mobile. It appears, the car owner also engaged in the business of giving cars on hire/rent. That the Call Detail Records shows that the night intervening 23rd September, 2017 and 24th September, 2017, the tower location was displayed to be at Murbad. Prima-facie, therefore, the evidence in the shape of tower locations shows, the applicant had not visited Bhiwandi as was told to Vishal Talkar whose Qualis Car he had falsely taken to visit Bhiwandi.

6. It may be stated that, husband of the deceased had received a call from the applicant that the deceased had boarded the Hyderabad bound bus on 23rd September, 2017 at 6.00 p.m. and thereafter his wife the deceased, Sangita had also confirmed this fact by calling the husband on his mobile. At the

relevant time, the deceased's husband was not in Karnataka. Thereafter, on the next day, he tried to call his wife; however, there was no response. He made an enquiry at his native place but he could not trace his wife's whereabouts. Thereafter, he went to Village-Alandi and told this fact to his brother. They tried to search the deceased at the native place and in the nearby villages, but they could not find her anywhere. When, he went to report the incident on the failure of his wife's return by 26.09.2017 to Aland Police Station, he was informed there that Police Patil from Tokavde, District-Thane, had received an information about dead body of a woman being found at Village-Ide, and it was subsequently identified by the husband that the dead body was of his wife from the photograph which was forwarded. Thereafter, his statement was recorded on 27th September, 2017 wherein he alleged that the applicant and his wife conspired to eliminate Sangita over dispute in respect of which deceased was to receive compensation and thus both had called her to Mumbai and thereafter on 23rd September, 2017 murdered her.

7. Mr. Patel, learned Senior Counsel appearing for the applicant submits that, the case of the

prosecution rests on the circumstantial evidence, and that there is no material/evidence on record, which would prima-facie disclose his complicity. Further, there is no material on record to connect the applicant to the subject crime. He has taken me through the chargesheet and submitted that the applicant has been in custody since September, 2017. It is further submitted that, applicant's presence for the trial can be secured by imposing conditions and that the trial is not likely to commence in the near future. He therefore seeks applicant's enlargement on bail.

8. The learned APP, on the other hand, has relied on the statement of car owner and the Call Detail Records. He submits that evidence of Qualis Car owner and the Call Detail Records, do not prima-facie, indicates the complicity of the applicant in the present crime. Besides, the learned APP has relied on the discovery of the weapon allegedly used for commission of the said crime and the clothes recovered on his instance from the place nearby where the dead body of the deceased was found.

9. Statement of Vishal Talkar recorded under

Section 161 shows, his vehicle was taken by the applicant on 23rd September, 2017 at 6.00 p.m. on the pretext of visiting Bhiwandi. Evidence prima-facie shows that at 0.38 hours, (night intervening 23rd and 24th September, 2017) as per the Call Detail Records, he was in the vicinity of Taluka-Murbad. Therefore, he had not visited Bhiwandi at all as was told by him to the car owner.

10. Prosecution has also relied upon the Call Detail Records of the deceased which shows he had received a call/message on 23rd September, 2017 at 19.23 hours at Western Express Highway opposite Nirlon Colony. She had also received calls at 17.56, 18.34, 19.01 and 19.02 hours displaying the tower location at Kannadpada, Goregaon from which, it can be concluded that till 19.23 hours, the deceased was in Goregaon, Mumbai.

11. Thus, taking into consideration the evidence available on record, except the Call Detail Records of the applicant, there is no other material to connect and/or to suggest that the applicant was in company of the deceased soon after she allegedly boarded the Hyderabad bound bus. The alleged

recovery of the blood-stained iron rod and the clothes, in my view, are not sufficient to connect the applicant to the alleged crime. The prosecution had not placed on record, evidence of any person to *prima-facie* establish that the applicant was last seen in the company of the deceased. It may also be stated that, the prosecution has not placed on record, all Call Detail Records of the applicant, in as much as, it is prosecution's case that the deceased-husband had received a call from the applicant at 6.00 clock who then had informed him that his wife had boarded the Hyderabad bound bus. However, the corresponding tower location of the applicant has not been brought on record. The applicant has been in the custody since September, 2017 and his presence for the trial can be secured by imposing conditions. In view of the facts of the case and the material presented, the applicant is directed to be released on bail. Hence, the following order :

ORDER

(i) The Bail Application is allowed.

(ii) The applicant arrested in C.R. No. 107/2017 registered with Tokawadi Police Station, Thane

be released on bail on furnishing P.R. Bond of Rs. 25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like amount.

(iii) The applicant shall attend the concerned Police Station as and when called.

(iv) The applicant shall furnish the particulars of his place of residence and contact number to the Investigating Officer of the Police Station concerned within seven days of his release on bail.

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

12. It is made clear that observations made hereinabove shall be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)