

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3120 OF 2019

Shabbir Ahmad Shaikh

...Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Dheeraj Panchange, Advocate for the applicant.

Ms. P.P. Shinde, APP for Respondent-State.

Mr. Rajkumar Rakamgi, A.P.I., Shahapur Police Station.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 28th January, 2020.

P.C. :

Heard.

1. Applicant, who is the accused no.4, seeks enlargement on bail in Crime No. 311/2017 registered with Shahapur Police Station for the alleged offences punishable under Section 302, 201 read with 34 of the Indian Penal Code, 1860 ("IPC" for short).

2. It is prosecution's case that the accused

no.1 had extra marital relation with the accused no.2 who in connivance with the other accused, strangulated the deceased (husband of accused no.1) and threw his corpse in the Tansa river. Provisional cause of death reported of the deceased was "Asphyxia with e/o Ligature and contusion at neck".

3. The prosecution's case rests on the circumstantial evidence. So far as this applicant is concerned, prosecution has relied on the statement of Prakashkumar Solanki, a shopkeeper from whose shop the applicant had allegedly purchased a nylon rope and used to strangle the deceased. Besides the statement of shopkeeper and the disclosure by the accused no.2, no other evidence has been brought to my notice to show the complicity of the applicant in the subject crime.

4. Learned APP has brought to my notice the statement of one Dinesh Mali whose statement was recorded on 26.06.2017 i.e. after 5 days of the

incident wherein he stated that on 20.06.2017, the applicant and the co-accused Tushar Adhikari had approached him to ask for his motor cycle. Prosecution has alleged the motor cycle was used for carrying the corpse of the deceased which they had then thrown in the river Tansa. Tushar Adhikari, who allegedly threw the corpse in the river, is accused no.3, has been released on bail on 28.08.2019.

5. Thus alleged purchase of nylon rope by the applicant from the shopkeeper is only piece of evidence sought to be placed in evidence against the applicant. Learned APP has also relied on the statement of Ravindra who had allegedly seen the accused no.2 on the bank of river Tansa on 20.06.2017, in the company of three others. However, in the absence of test identification parade, prosecution could not assert, applicant's presence, with accused no.2 at the river Tansa.

6. Thus, taking into consideration the

evidence available on record and the order releasing the applicant no.3 on bail, I have no reason to decline the bail to the applicant, hence the following order.

ORDER

(i) The applicant is directed to be released on bail on executing P.R. Bond for the sum of Rs.15,000/- with one or two local surety in the like sum;

(ii) The applicant shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;

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

(iv) The applicant shall furnish the particulars of his residential address as well

as permanent address and contact details to the investigating officer within seven days from the date of his release on bail;

(v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The application is allowed in the aforesaid terms and disposed off.

8. It is made clear that the 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.)