

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3289 OF 2019

Arjun Amogsiddha Shelke

Applicant

versus

The State of Maharashtra

Respondent

Mr.Ritesh M. Thobde, Advocate for applicant.

Mr.A.R.Kapadnis, APP, for State.

Mr.H.S.Padalkar, PSI, Lonikand Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th December 2020

PC :

1. This is an application for bail in connection with CR No.73 of 2019 registered with Lonikand Police Station for offences punishable under Sections 302, 201 r/w 34 of Indian Penal Code. The applicant was arrested on 3rd February 2019.

2. The prosecution case is that Mr.Ramesh Jadhvar filed FIR contending that Kundalik Khandekar filed FIR on 1st May 2018 with Sambajinagar Police Station, Parli Vaijanath. According to the said FIR, Manibai Dhagekar, Sandip Kalel, Sidba Kalel, Arjun Shelke, Shesrao Khandekar had kidnapped Vimalabai from bus stand of Parli Vaijanath. During investigation Janardhan Dhagekar gave statement and Kundalik Khandekar gave supplementary statement. They stated that to avoid inconvenience they filed complaint of kidnapping at Parli Vaijanath. In fact, two months prior to the incident, Vimalbai and Janardhan Dhagekar had come to Pune at work and the said incident had occurred within the limits of Lonikand Police Station.

The case was transferred to Lonikand Police Station. During investigation it was revealed that Maina Dhagekar told her brother Sandip Kalel that her husband had kept illicit relation with Vimlabai. Due to which Sandip and Arjun went to Wagholi and met Mainabai and her husband. On their insistence they took meal and thereafter they made to sit Vimalbai on the motorcycle. Thereafter the victim Vimalbai was killed by giving blow of stone on her head and buried her on the ditch.

3. The applicant had preferred application for bail before the Sessions Court, which has been rejected by order dated 1st October 2019. While rejecting the said application it was observed that statement of Rajendra Gunjal, Vasant Thorat and Sunil Dhavle show that the applicant was last seen with accused. The dead body was recovered by Sandip Kalel Prior to the incident the applicant and the accused had gone on motorcycle with Vimalbai. They were last seen together by prosecution witnesses.

4. Learned counsel for applicant submitted that there is no eye witness to the incident. The entire case is based on circumstantial evidence. The observations made by the Sessions Court are contrary to the evidence on record. There is no specific evidence of last seen together. The witnesses referred in the order passed by the Sessions Judge, do not say that they had witnessed applicant, deceased Vimalbai and co-accused leaving together. There are no criminal antecedents against applicant.

5. Learned APP submitted that there are strong circumstances against applicant to show his involvement in the crime. The

investigation revealed that the applicant has not attended his duty on the date of incident. The mobile phone of the applicant was seized during investigation. The CDR shows that on the date of incident, tower location of the mobile phone of the applicant indicate that the applicant was near the vicinity of place of incident. The tower location of co-accused also shows that he was in the vicinity of crime.

6. It is apparent that there is no eye witness to the incident. The place of incident was allegedly shown by the co-accused which has resulted in recovery of some bones which were buried in the ground. The incident had occurred one year prior to the said discovery. Statements of witnesses Vasant Thorat, Sunil Dhavle, Ajay Utrande, Amrish Pawar and Rajendra Gunjal were recorded on 5th February 2019. Those statements disclose that on 9th April 2018 persons named Janardhan Dhagekar, Mainabai Dhagekar, Vimalbai had joined the work at construction site. They were occupying tin shed for residence situated near the construction site. They worked till 30th April 2018. Thereafter they did not join the work. On enquiry with other workers it was revealed that since some relatives from their village had come, they were not seen after 30th April 2018. They did not join the work after 30th April 2018. On 5th February 2019 police attached to Lonikand Police Station visited the site and informed that one of the family member of the worker working at the site has been murdered. On enquiry with workers working at the construction site, the witnesses were informed that Mainabai Dhagekar had informed her brother Sandip Kalal with Vimalbai is troubling her and hence with the help of relative Arjun Shelke, the victim Vimalbai was taken to market under the pretext of purchasing vegetables and thereafter she was killed and her body was buried.

The statement of the aforesaid witnesses are identical. They are not the witnesses who had seen the accused and the victim together leaving construction site on motorcycle. Their version is based on hear-say information provided to them by the worker who was not named by them. There is no eye witness to murder of victim. The prosecution is relying on the evidence of tower location. It is alleged that the applicant was using mobile phone NO.7558216562. However, prosecution could not point out any seizure panchanama about seizure of said cell phone at the instance of applicant. The document relating to arrest panchanama to show that the cell phone was found on the person of applicant, is also not on record. The documents to show that aforesaid mobile number stands in the name of applicant is also not on record.

7. Considering the circumstances, case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3289 of 2019 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.72 of 2019 registered with Lonikand Police Station, District Pune, on executing PR bonds in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Lonikand Police Station, District Pune once in a month on every first Saturday between 11 am and 1 pm till further orders;
- (iv) The applicant shall not tamper with evidence.

8. It is clarified that observations made in this order are prima facie for considering the application for bail and the Trial Court shall not influenced by them at the time of trial.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

MST