

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 701 OF 2021

Rajkumar s/o Laxman Gaikwad

Applicant

Versus

The State of Maharashtra

Respondent

Mr. P.P. More, Advocate for the applicant.

Mr. V.M. Kagne, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 12th October, 2021.

PER COURT :

1. Heard.

2. It is the prosecution case that the informant is the brother of the deceased. On 6th July, 2020, at 8.00 am, deceased Prabhakar had gone out. However, he did not come back. Therefore, at 8.30 pm, the informant contacted the deceased on cell phone. The deceased answered that he was in Chapoli and disconnected the phone. On the next day, i.e. 7th July, 2020, at 9.30 am, the informant was called at Vijaya Gas Agency by one Parmeshwar Swami. There the informant learned that the deceased was murdered at a place in front of Lohare Furniture on Latur-Chapoli

road. Accordingly, he lodged report against unknown person. Offence under Section 302 of the Indian Penal came to be registered.

3. Shri More, learned counsel for the applicant submits that the prosecution is relying only on last seen theory. Applicant has no criminal antecedents. The alleged motive of murder of deceased is the illicit relations between accused Dhanajay and the wife of the deceased. The deceased was an obstacle in their illicit relations and for that reason, he was eliminated by accused Dhananjay and the applicant. He submits that there is CCTV footage which shows that on 6th July, 2020, at 7.00 pm, the deceased was seen in the company of the applicant. He submits that except this evidence, there is nothing on record to show that the applicant is the author of the crime.

4. Learned APP Shri Kagne submits that the applicant, accused Dhananjay and the deceased were drinking liquor together and they were spotted by witnesses Digambar Somwanshi, Lala Nalawade and Bajrang Jagtap. He submits that witness Bajrang Jagtap had identified accused Dhananjay and the applicant to be the persons who were last seen with the deceased. He submits that at

9.30 pm also some witnesses had seen accused Dhananjay, applicant and the deceased together. He submits that soon thereafter, the deceased was found dead. He submits that in this case, considering the time gap, the possibility of any third person to be the perpetrator of the crime is remote.

5. Prosecution case is based on last seen theory. Deceased, applicant and accused Dhananjay were seen together by the witnesses at 6.30 pm. At 7.00 pm, they were seen in the video footage. It appears that the death of the deceased took place some time between 7.00 pm of 6th July, 2020 and 9.30 am of 7th July, 2020. Complicity of the accused can be determined only after establishing the time of death. They were seen together at 7.00 pm and thereafter the dead body was found at 9.30 am. Thus, there is a gap of more than twelve hours. Applicant does not have any motive against the deceased to eliminate him. Allegations against accused Dhananjay only are made that he had a motive to kill the deceased as he was having illicit relations with the wife of the deceased. This shows that entire evidence is based on circumstantial evidence and the applicant is arrested on the basis of suspicion. Charge-sheet is filed. Applicant has no criminal antecedents. He has roots in the society

and is a permanent resident of Lanaji, Tq. Ahmedpur, Dist. Latur. In view of this, a case for bail is made out. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.30,000/- (Rs. Thirty Thousand only) with one solvent surety in the like amount in connection with Crime No. 231/2020 registered with Chakur Police Sation, Tq. Chakur, Dist. Latur, for the offences punishable under Sections 302, 201, 109 read with section 34 of the Indian Penal Code.
- iii) Application stands disposed of.
- iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge