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**IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL APPLICATION BAIL No.67 OF 2021.**

CHANDMIA JABBAR, PRESENTLY
LODGED AT CENTRAL JAIL,
COLVALE, THR., ARMINA KHATUN ... Applicant.

Versus

STATE OF GOA, THR. POLICE
INSPECTOR, MAHESH GADEKAR AND ...Respondents.
ANR.

Mr. S. G. Desai, Senior Advocate with Mr. Siddharth Naik
and Mr. Tejas Rane, Advocates *for the applicant*.

Mr. P. Faldessai, Addl. Public Prosecutor for the respondents.

**CORAM: MANISH PITALE, J.
DATED: 22nd November, 2021.**

P.C.:

1. By this application, the applicant is seeking bail in connection with offence registered against him and two other accused persons under Sections 302 and 201 read with Section 34 of Indian Penal Code (IPC).

2. In the present case, First Information Report (FIR) no. 120/2020 was registered at Bicholim Police Station, North Goa on 19.9.2020, against the three accused persons for the aforesaid offences. They are alleged to have committed the murder of a cousin of the applicant, cut his dead body into pieces and thrown it in a jungle near a factory in connection with which the applicant is a labour contractor providing labour.

3. The applicant was arrested on 20.9.2020 and so were the other accused persons. He has remained behind bars for about one year and two months. The investigation in the matter was completed and chargesheet was filed on 14.12.2020. According to the investigating authority, there is sufficient material on record to indicate involvement of the applicant in the heinous crime.

4. Mr. S. G. Desai, learned Senior Counsel appearing for the applicant submitted that in the present case there is no material against the applicant, other than disclosure statements made by the applicant and the other two accused persons. By relying upon the provisions of the Evidence Act, learned Senior Counsel submitted that such statements would be of no value for the prosecution to ultimately prove the involvement of the applicant. It is submitted that the memorandum prepared under Section 27 of the Evidence Act can be relevant only in the context of recovery of material pursuant to the statements made by the accused persons. No other contents of the memorandum amounting to confession of guilt can be held against the accused in that connection. It is further submitted that the Investigating Authority has not been able to bring on record any material *prima facie* to connect the applicant with the incident.

5. Attention of this Court is invited to the statement of the widow of the applicant to submit that it belies the claim of the Investigating Authority that there was an extra marital affair between the said witness and the applicant and in that connection the aforesaid heinous crime was committed. Particular emphasis was placed on that part of the statement

of the aforesaid witness where she has stated that the applicant was at home from 4.45 p.m to about 7.30 p.m and thereafter, he went in search of the deceased, after receiving a call. It is claimed that the said statement completely contradicts another statement of one Raju recorded in the course of investigation wherein the said witness has claimed that he had seen the applicant and other two accused persons at around 5.00 p.m. on the same day i.e. 15.9.2020, throwing certain plastic bags over the wall of the factory into the adjoining jungle. The learned Senior Counsel for the applicant relied upon the order of this Court dated 25.11.2020 passed in ***Criminal Bail Application (ST) No. 4997 of 2020(Lahanu Tatyaba Thorat Vs The State of Maharashtra)***, to contend that in similar circumstances this Court had granted bail to the accused on the basis that disclosure/confessional statements were hit by Sections 25 and 26 of the Evidence Act. The learned Senior Counsel also placed reliance on the judgment of the Supreme Court in ***Sanjay Chandra Vs CBI, (2012)1 SCC 40***, to contend that bail is the rule and committal to jail is an exception.

6. On the other hand, Mr. P. Faldessai, learned Addl. Public Prosecutor submitted that the Investigating Authority was not relying only upon the disclosure statements made by the applicant and other accused persons. Much emphasis was placed on statement of the aforesaid witness Raju, recorded on 20.9.2020, wherein the said witness has described in detail that on 15.9.2020, he saw all the three accused persons including the applicant herein throwing plastic bags over the wall of the factory in the adjoining jungle and that subsequently the body of the deceased was found in similar

plastic bags during the course of investigation. It was emphasized that the mobile of the deceased was recovered from a nearby place at the behest of the applicant/ accused no.2. It was also brought to the notice of this Court that panchanama of room no.31 said to be allotted to accused no.1 demonstrated that there were blood stains found in the room. According to the learned Addl. Public Prosecutor the material on record was enough to connect the applicant and other accused persons to the incident in question and that since there was possibility of the witnesses being influenced if bail was granted, the present application deserved to be dismissed.

7. In the present case, there is no eye witness to the actual incident. Therefore, it is case of circumstantial evidence. In such cases, the material on record has to be appreciated to examine as to whether a *prima facie* case is made out against the accused and whether there is any *prima facie* connection established between the incident in question and the applicant before the Court.

8. In the present case, the disclosure statements of the applicant and other accused persons indicate that the three accused persons had committed the aforesaid crime and thereafter the body of the deceased was cut into pieces and disposed of in the aforesaid manner. There can be no quarrel with the proposition that the aforesaid statements themselves cannot be enough to implicate the applicant and other accused persons, as they would be hit by Sections 25 and 26 of the Evidence Act. Nonetheless, those parts of the memorandum recorded under Section 27 of the Evidence Act

would be relevant, which led to discovery and recovery of certain material in the present case.

9. Such statements have to be read in conjunction with the entire material on record. In this case, statement of witness Raju recorded on 20.9.2020 i.e. immediately the day after registration of FIR shows that he claims to have seen the applicant throwing certain plastic bags over the wall of the factory into the nearby jungle. It was stated that although he could not see what was there in the plastic bags, he did see that one plastic bag was blue and other one was white. It is stated that the aforesaid witness saw the applicant and other accused persons carrying out the aforesaid activity at around 5.00 p.m. on 15.9.2020. It is stated by the said witness that while the process of investigation was started pursuant to the registration of the FIR and the decomposed body of the deceased was found in the adjoining jungle, he saw that parts of the body of the deceased were found in plastic bags similar to the bags that he had noticed on 15.9.2020. This statement of the aforesaid witness is of some significance. The learned Senior Counsel appearing for the applicant has sought to contradict the same on the basis of the statement given by the widow of the deceased i.e. Anija Sultana. It is significant that the said statement was recorded on 25.9.2009 i.e. on the 6th day after registration of FIR. In the said statement the aforesaid witness had claimed that the applicant was at home between 4.45 p.m and 7.30 pm on 15.9.2020. Much emphasis is placed on the said aspect of the matter on behalf of the applicant to claim that there is serious contradiction to the statement of the aforesaid witness Raju recorded during the course of investigation.

10. It is further claimed that if the disclosures of the accused persons are perused, they contradict the exact role played by the three accused persons as claimed by the aforesaid witness Raju. The material on record shows that house search panchanama dated 20.9.2020 pertaining to room no. 31 was recorded. This room was allegedly allotted to the accused no.1, which was also being used by other persons, including the applicant. The contents of the said panchanama reveal that there were blood stains found in various places in the said room and that samples of blood were collected during the course of investigation.

11. This Court has taken into consideration the material on record. Perusal of the same shows that the contention raised on behalf of the applicant that other than disclosure statements of the accused persons, there is no material on record to connect the applicant with the incident in question, is not acceptable. The statement of the aforesaid witness Raju recorded on 20.9.2020 is significant and it attributes certain roles to the accused persons, including the applicant, pertaining to their alleged activities on 15.9.2020 i.e. the day on which the deceased disappeared. The panchanama recorded on 20.9.2020, pertaining to search of room no. 31 also indicates that blood stains were found at various places in the said room and this is also a circumstance which is significant as regards involvement of the accused persons in the said crime. Merely because the room was allegedly allotted to the accused no.1 cannot be a factor in favour of the applicant before this Court. In so far as the alleged contradictions are concerned, it would be matter for the trial.

12. For the present, this Court is concerned with the aspect as to whether there is enough material to *prima facie* show involvement of the applicant with the aforesaid crime. There can be no doubt about the fact that the offence in the present case is of serious nature and that the manner in which it was carried out shows the heinous nature of the crime. The case of the prosecution would be of circumstantial evidence and at this stage, this Court is required to examine as to whether there is material to indicate circumstances showing the involvement of the applicant. This Court is of the opinion that the material on record *prima facie* indicates the involvement of the applicant in the aforesaid crime.

13. In so far as reliance on order of this Court in ***Lahanu Tatyán Thorat Vs the State of Maharashtra***(supra) is concerned, it appears that in the aforesaid case the Investigating Authority had sought to rely only upon the disclosure statements of the accused persons. In the present case, as noted above, there is material other than such disclosure statements and therefore, the aforesaid case is distinguishable from the present case.

14. In so far as judgment of ***Sanjay Chandra Vs CBI*** (supra) is concerned, the Hon'ble Supreme Court has deliberated upon the law relating to the grant or refusal of bail. There can be no quarrel with the proposition that bail is the rule and committal to jail is an exception but, that would not mean that bail cannot be refused in such cases where the Court concludes that grant of bail may result in thwarting the course of justice, *inter alia*, by intimidation and influencing of witnesses.

15. In the present case, the aforesaid witness Raju is a labour working in the factory where the accused persons, including the applicant before this Court are said to be labour contractors. Release of the applicant would have the possibility of the witnesses being influenced. Apart from this, as noted above, a *prima facie* case is made out against the applicant and therefore, this Court finds that there is no merit in the present application.

16. In view of the above, the application is dismissed. It is made clear that the observations made in the present order are only in the context of the question of grant or refusal of bail to the applicant. The Sessions Court shall proceed further with the matter without being influenced by the said observations.

MANISH PITALE,J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK
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