

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1603 OF 2021

SAMADHAN BALI KAMBLE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Aniket Nikam i/b. Mr.Vivek Arote, Advocate for the Applicant.

Smt. P. P. Shinde, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 7th DECEMBER 2021
PRONOUNCED ON : 20th DECEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.265 of 2020 registered with Police Station Juna Rajwada, Kolhapur, for offences punishable under Section 302, 120B, 201 read with 34 of the Indian Penal Code (IPC).

2 Deceased Laxman Bhagwat Daware was elder brother of informant. Applicant is the neighbour of his deceased brother. Applicant was suspecting that deceased was having an ill eye over his wife and on that count used to quarrel. Two to three days prior to the incident, even applicant had abused deceased and threatened that he would kill him.

3 According to prosecution on 3rd June 2020 as the deceased did not visit informant's house, at about 11.30 a.m., informant gave him tiffin. Even dinner was also given by the informant at about 11.00 p.m. At that time, the deceased was in his house.

4 On 4th June 2020, the informant received a call from his mother that police had come and dead body of the deceased was found in a rivulet. He even got a phone call from the applicant to that effect. The informant rushed to the spot. After postmortem, the body was consigned to flames.

5 According to prosecution after performing last rites when the informant returned and inspected house of deceased, he found pillow cover missing. He also came to know from the neighbour of the deceased, namely, Raju Sathe that in the morning of 3rd June 2020 a quarrel had taken place. Thus, on the ground of suspicion, the informant lodged the First Information Report (FIR) against applicant and others.

6 Mr.Aniket Nikam, learned counsel for the applicant, submits that prosecution has not been able to establish motive. Even there is nothing on record to show that the deceased was seen lastly in the company of the applicant. Although the prosecution has filed on record the CDR but that CDR pertains to applicant and other accused. The only incriminating evidence against the applicant is the recovery of pillow cover. Investigation is over and charge-sheet has been filed. There are no criminal antecedents. In such circumstances, applicant deserves to be enlarged on bail.

7 Per contra, Smt.PP. Shinde, learned APP, on the other hand, opposed the submissions by contending that there is recovery of pillow cover at the instance of applicant. The learned APP then invited my attention to the findings of the postmortem report wherein the cause of death is given as ligature strangulation. There being no merit in the application, the same is liable to be rejected.

8 Perused the investigation papers. First of all, it may be noted that the FIR came to be filed only on the ground of suspicion against applicant and others. There is no direct evidence on record to suggest that the applicant had authored the death of the deceased. Although the postmortem report shows that the cause of death was ligature strangulation, but then no material is brought on record to even remotely suggest that the applicant not only was lastly seen in the company of deceased but he was instrumental behind the strangulation.

9 As far as recovery of pillow cover is concerned, admittedly, the disclosure statement recorded under Section 27 of the Indian Evidence Act does show that the pillow cover was recovered at the instance of applicant but that circumstance in itself will not be sufficient to fasten any criminal liability.

10 It is well established that in case of circumstantial evidence, chain of circumstances are required to be established. The only circumstance in the form or recovery of pillow cover will not enable me to form a positive opinion prima facie as to the involvement of the applicant in the alleged offence. Moreover, investigation is over. No criminal antecedents are brought on record.

11 In such circumstances, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Samadhan Bali Kamble shall be released on bail in Crime No.265 of 2020 registered with Police Station Juna

Rajwada, Kolhapur, on his executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)