

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.194 OF 2021

Sanjit Faujdar Jaiswar

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Mohammed U. Kazi, Advocate for Applicant.
- Mr.Ameet A. Palkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.I-600/2019 registered with Mahatma Phule Chowk Police Station, Kalyan, under sections 302, 201, 120-B r/w 34 of the Indian Penal Code. The Applicant was arrested on 13/12/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The prosecution case is in respect of murder of one Rajiv Bidlan. According to the prosecution case, the Applicant was married to Rupa. Rupa and the deceased Rajiv Bidlan got

friendly. The Applicant became suspicious of their relationship. Therefore there used to be frequent quarrels between the Applicant and his wife Rupa. It is the prosecution case that Rupa had gone to reside in Delhi with the deceased Rajiv. During that time, the Applicant had lodged complaint about her missing at Mahatma Phule Police Station vide missing complaint No.2/2019 on 07/01/2019. Somehow the Applicant got in touch with Rupa. He convinced her to come back to Kalyan and to reside with him.

3. On 02/02/2019 Rupa returned to Kalyan. At that time, the Applicant was residing in a rented place. The deceased Rajiv himself booked another room on rent and resided in that room. The Applicant, Rupa, their children and Applicant's mother started residing together. Interestingly, the deceased Rajiv also was residing with them. According to the prosecution case, on 21/10/2019, the Applicant on some pretext called the deceased to come to some place. He was made to consume liquor. He was taken to a secluded place. The Applicant and other accused then committed his murder by stabbing him with a sharp pointed

weapon. They threw his body in the bushes near Bhivandi pipeline. The prosecution case is that one Pradip Gupta gave information to Dilip Gautam about the incident, who in turn told about it to Rupa and then the police came to know about it. They carried out search in the area and the dead body was found. Then the FIR was lodged on 10/12/2019.

4. The FIR was lodged by Police Constable Dhananjay Sonavale. He has stated about the facts mentioned hereinabove. It was mentioned in the FIR that the deceased had left his house on 21/10/2019 at about 08.00 p.m. pursuant to the telephonic call made by the present Applicant and since then he had not returned. Since 18/11/2019, the Applicant himself had disappeared, the FIR mentions about the information supplied by Dilip Gautam, which he had received from Pradip Gupta about the murder and throwing away of the dead body. The dead body was ultimately found on 10/12/2019. It was identified by one Ajit Bidlan, brother of the deceased. On this basis, the FIR was lodged against the present Applicant Sanjit Faujdar, Sandip @ Bala Gautam, Uttam Jaiswar and Rahul.

5. Heard Mr.Mohammed U. Kazi, learned counsel for the Applicant and Mr.Ameet A. Palkar, learned APP for the State.
6. Learned counsel for the Applicant submitted that there are no eyewitnesses to the incident. The case is based purely on circumstantial evidence. He submitted that the most important witness Pradip Gupta was not found by the police and no such statement appears in the charge-sheet. He submitted that the circumstances against the present Applicant are motive, recovery of weapon, last seen together theory. He submitted that none of these circumstance, is incriminating. Each one of these is a weak piece of evidence. They do not form a complete chain together. He submitted that the three co-accused namely Sandip @ Bala Gautam, Uttam Jaiswar and Rahul, who were named in the FIR are granted bail by this Court. Therefore on the ground of parity also, the Applicant deserves to be released on bail. He further submitted that the Applicant is willing to furnish 'local solvent sureties'.

7. Learned APP opposed this application. He submitted that the circumstances mentioned hereinabove, are strong enough and they form complete chain against the present Applicant.
8. I have considered these submissions. In this context, statement of Applicant's wife Rupa is important. Her statements are recorded on different occasions before lodging of the FIR and after lodging of the FIR. Her statements are recorded on 10/12/2019, 25/10/2019 and 12/12/2019. Her statement after registration of FIR gives details about the history of relationship between the deceased, the Applicant and this witness Rupa herself. The statement shows that the Applicant was suspicious of the relationship between Rupa and the deceased. On 07/12/2018 Rupa had gone to Delhi with the deceased Rajiv. She resided at Delhi with Rajiv and she came back to Kalyan in February 2019. Again she left Kalyan with Rajiv on 14/03/2019 and started residing at Delhi. There she was residing with Rajiv and her mother. Subsequently, again in June 2019, she came to

Kalyan with Rajiv and started residing with the Applicant, her children and Rajiv in the same room. She has stated that on 21/10/2019, at about 08.00 p.m. Rajiv was in the house. The Applicant had called him telephonically and had asked him to come to some place. The deceased Rajiv had left the house. Thereafter he did not return. Thereafter the Applicant came home at around 2 o'clock in the night. The Applicant told her that Rajiv was dropped near Kalyan. On 09/12/2019 Rupa's brother Dilip informed the police that one Pradip had told him about the murder committed by the Applicant and his associates. This is an important statement in connection with the circumstance of 'motive' against the present Applicant. There are statements of neighbours, who have stated that the deceased was residing with the Applicant's family including Rupa in that room. Those neighbours are Govind Hadole and Rina Tomar. Both of them have stated that they used to hear noise of quarrel from that room and that they came to know that the quarrels took place because of the alleged illicit relationship between the deceased and Rupa.

9. So far as the motive part is concerned, there appears to be strong suspicion entertained by the Applicant against Rajiv and his own wife Rupa. However, the statements also show that all of them were residing together and therefore apparently the Applicant had made peace with this circumstance of the alleged relationship between the deceased and his own wife Rupa. In this context, the circumstance of motive appears to be a weak piece of circumstance.

10. The next circumstance is about the Applicant having been seen together with the deceased before the deceased had disappeared. For that circumstance, the prosecution is relying on Rupa's statement again. Her statement is that, on 21/10/2019, the deceased had left the room after the Applicant had called him. Thereafter actually no witness had seen the Applicant and the deceased together. Therefore strictly speaking this may not amount to theory of 'last seen together'. The FIR shows that the dead body was found on 10/12/2019. Thus, there was a gap of

about one month and 20 days from the time when the deceased had left his house. Therefore there is no proximity of time. Similarly, there is no proximity of place where the dead body was found. Therefore even this circumstance is not very strong.

11. Third circumstance is about finding of a pointed sharp weapon at the instance of the present Applicant. The recovery panchanama is dated 16/12/2019. The weapon was found at a place which was accessible to all. It was not concealed at a particular place, but was thrown away in the bushes. Therefore in the context of this case, this circumstance also becomes a weak circumstance.

12. In this background orders granting bail to the co-accuse Sandip, Rahul and Uttam assume importance. The principle of parity applies in favour of the present Applicant.

13. Considering all these aspects, the Applicant has made out case for his release on bail. He is already in custody since

13/12/2019. His further custody for the entire duration of the trial, is not warranted. These observations restricted to passing of this order. The trial court should not be influenced by any of these observations. It shall decide this case on its own merits, on the basis of evidence produced before it.

14. Hence, the following order :

ORDER

- (i) In connection with C.R.No.I-600/2019 registered with Mahatma Phule Chowk Police Station, Kalyan, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two local solvent sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)