

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1058 OF 2021

Suraj Vitthal Jagdale

Applicant

versus

The State of Maharashtra

Respondent

Mr.Ahinkya Udane for applicant.

Mr.Y.Y.Dabake, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 13th August 2021

PC :

1. Pursuant to order passed by co-ordinate Bench to list this application before this Court, the application is listed before me. The applicant is arrested on 14-9-2016 in connection with CR No.400 of 2016 registered with Khed Police Station, District Pune, for offences under Sections 302, 201 of Indian Penal Code.

2. The FIR was lodged by father of the deceased on 11-9-2016. The deceased is the married daughter of complainant. The information was received through the step son of deceased by the complainant that the deceased had left house on 3-9-2016 and did not return. The FIR was lodged against unknown person. Subsequently missing complaint was filed. On 11-9-2016 dead body of a woman was found in the forest of Bhimashankar. On the basis of clothes worn by the victim and other description of the body, it was identified to be the body of deceased Sunita Jagdale. Investigation proceeded. Supplementary statement of complainant was recorded on 15-9-2016. In the said statement the complainant

has stated that his relative Vilas Kshirsagar had informed him that on 3-9-2016 he had seen the applicant and the victim together having snacks and thereafter proceeding on motorcycle. On the basis of this information the applicant was interrogated and he was arrested. Statement of Vilas Kshirsagar was recorded on 14-9-2016. He has stated that the victim was seen in the company of applicant. Statements of various other witnesses were recorded. On completing investigation charge sheet was filed. The applicant had preferred two applications for bail before this Court.

3. The first application was withdrawn vide order dated 4-5-2017. The second application was disposed off vide order dated 13-1-2020. The second application was not adjudicated on merits. Considering the fact that applicant was in custody from 2016 and since it was pointed out by learned APP that the matter is fixed for framing charge, vide order dated 13-1-2020 trial was expedited. The Trial Court was requested to make an endeavour to conclude within a period of six months. The jail authorities were directed to produce the applicant before the Court for framing charge and defense was also directed to co-operate in the trial without delaying the same.

4. Learned counsel for applicant submitted that although charge is framed, there is no progress in trial. The applicant is in custody for a period of about four years nine months. On account of pandemic, the Trial Court is functioning partially and has been taking only urgent matters like bail applications and anticipatory bail applications. The entire case is based on circumstantial evidence. The only circumstance used against applicant is last seen together, which is a weak piece of evidence. The statement of Vilas Kshirsagar

was recorded on 14-9-2016. There is delay in recording his statement. Vilas Kshirsagar is the close relative of complainant. Although knife is recovered from the applicant, there were no blood stains on it. It was allegedly washed and kept in kitchen of applicant. Applicant was a student and aged about 20 years at the time of incident. He is the nephew of victim. The motive attributed to the applicant is very weak.

5. Learned APP submitted that there are strong circumstances to show complicity of applicant in the offence. The statement of Vilas Kshirsagar mentions that applicant was seen in the company of victim on 3-9-2016. He was proceedings towards Bhimashankar on motorcycle along with deceased. There were quarrel between mother of applicant and deceased. She had also abused the applicant. Hence, the applicant had grudge against victim and on account of that she was taken to Bhimashankar forest and killed by using knife. There were injuries found on the person of deceased. There is recovery of weapon from the applicant. CDR is collected during the course of investigation. The CDR location indicate that applicant was near the place of incident where the offence is committed. The offence is of serious nature. On account of pandemic, the trial has not proceeded. The applicant is not entitled for bail.

6. It is pertinent to note that applicant is in custody from 14-9-2016. Thus, is in custody for a period of about four years and nine months. The applicant is not having any criminal antecedents. The applicant is close relative of deceased. The alleged motive attributed to the applicant is that there was a quarrel between mother of

applicant and victim. The motive appears to be very weak. There is no eye witness to the incident. The prosecution has strongly relied upon circumstance of last seen together. The statement of Vilas Kshirsagar was recorded on 14-9-2016. It is pertinent to note that the victim was missing from the house from 3-9-2016. Surprisingly this witness does not bother to tell Police or the relative of victim or the applicant that applicant was seen with deceased on 3-9-2016. For the first time he had disclosed the said fact on 14-9-2016. The applicant does not have criminal antecedents. At the time of incident, he was around twenty years and a student. There is recovery of knife from the house of applicant. Apparently there was no blood stain on it. Learned APP has submitted that CDR location of the applicant shows his presence near the place of incident. On perusal of CDR it is not very clear whether the applicant was at the place of incident i.e. Bhimashankar forest. Assuming that prosecution is relying on the evidence of tower location, considering the nature of evidence, only on the basis of such discrepant evidence, the applicant cannot be kept in custody for inordinate period. In spite of direction to expedite trial, there is no progress in trial. Considering these facts, case for grant of bail is made out. Hence, I pass following order:

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.400 of 2016 registered with Khed Police Station, District Pune, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall stay out of jurisdiction of Golegaon,

Karvande Mala, Taluka Shirur, District Pune, till further orders;

(iv) The applicant shall not tamper with evidence and approach witnesses in any manner and influence them;

(v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for eight weeks in lieu of sureties;

(vi) The applicant shall provide details of his residence and mobile number to the Investigating Officer where he intend to reside after being released on bail;

(vii) The applicant shall attend Trial Court regularly on dates of hearing, unless exempted by the Trial Court.

(PRAKASH D. NAIK, J.)

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