

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1928 OF 2021

KUSHAPPA RUKAWWA TALWAR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr. Anand Patil, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 17th NOVEMBER 2021
PRONOUNCED ON : 24th NOVEMBER 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.44 of 2020 registered with Police Station Kurundwad,
Kolhapur, for offences punishable under Sections 302 and 201 of
the Indian Penal Code (IPC).

2 It is the case of prosecution that the applicant and Kamlabai Basappa Mantoor (deceased for short) were acquainted with each other and were also in love with each other. The applicant had borrowed Rs.12,000/- from the deceased but did not return the same and therefore, the deceased used to abuse and threaten him. Because of this, it is alleged that on 10th February 2020, applicant took the deceased on his motorcycle in a sugarcane field bearing Gat No.1021 and with the help of petticoat and scarf strangled her to death.

3 Mr.Anand Patil, learned counsel for the applicant, submits that the whole case of prosecution is based on circumstantial evidence. The only evidence to that effect is that the applicant was lastly seen in the company of the deceased and there is also recovery of motorcycle at his instance. Similarly, panchnama of CCTV footage would show that the applicant was seen taking the deceased on his motorcycle on 11th February 2020 though there is no other evidence to connect the applicant with the alleged offence.

4 Mr.Dedhia, learned APP, on the other hand, has also advanced the same submissions and placed on record CCTV footage panchnama.

5 Perused the investigation papers. From the CCTV footage panchnama it is seen that the applicant was seen taking the deceased on his motorcycle. Then there is disclosure statement given by the applicant under Section 27 of the Indian Evidence Act whereby he produced the motorcycle. Lastly, there are statements of Vilas Satpute and Aakash Vilas Satpute recorded by the learned Judicial Magistrate, First Class, Kurundwad, under Section 164 of the Code of Criminal Procedure wherein they have stated in their respective statements that they had seen the applicant and the deceased on motorcycle on 11th February 2020. Thus, the only evidence forthcoming is that on 11th February 2020 the applicant and the deceased were seen in company of each other on motorcycle.

6 I have also gone through the postmortem report (page 166). The opinion as to the cause of death is “Opinion reserved in an advanced decomposed body”. No further evidence is forthcoming.

7 Having regard to the above material, in my considered opinion, there is no satisfactory and convincing evidence except last seen theory to connect the applicant with the alleged offence.

8 The applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) The application is allowed.

- (ii) Applicant – Kushappa Rukawwa Talwar shall be released on bail in Crime No.44 of 2020 registered with Police Station Kurundwad, Kolhapur, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (iii) Bail before the trial Court.
- (iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (v) 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.
- (vi) The application stands disposed off accordingly.

(V. G. BISHT, J.)

ARTI
VILAS
KHATATE

Digitally signed by
ARTI VILAS
KHATATE
Date: 2021.11.24
12:58:07 +0530