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

BAIL APPLICATION NO. 2525 OF 2021

Saurabh Dattatraya Niphade ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

.....

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

Mrs. P.P.Shinde, APP for the Respondent -State.

Mr.Gaurav V. Gokhale for Respondent No.2.

Mr. A.P.Kavade, PSI, Pimpalgaon Police Station, Nashik Rural.

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CORAM : V.G.BISHT, J.

RESERVED ON : 25TH NOVEMBER, 2021

PRONOUNCED ON : 10TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 22 of 2021 registered with Pimpalgaon Baswant Police Station, Nashik for the offences punishable under Sections 302, 201, 363, 120B read with 34 of the Indian Penal Code (the IPC) and under Sections 11 (4) and 12 of Protection of Children from Sexual Offences Act, 2012 .

2. It is the case of prosecution that the applicant and co-accused Vikram @ Vicky Gopinath Takate are friends. Co-accused Vikram Takate was in love with deceased minor girl and had sexually exploited the deceased. The deceased was therefore constantly requesting co-accused Vikram Takate to marry her. However, he was not willing to marry and rather wanted to get rid of her. The prosecution alleges that co-accused Vikram Takate hatched a conspiracy along with the applicant and accordingly both of them abducted her by a Mahindra pick-up vehicle. While travelling through several villages and on the way, somewhere they killed the deceased minor girl by strangulating her in the vehicle and thereafter, to cause the evidence disappear, threw her dead body in water canal. Her personal belongings were also thrown in the water canal. Accordingly, informant lodged the First Information Report (FIR).

3. Mr. Nikam, learned Counsel for the applicant, submits that the applicant had no motive to kill the deceased minor girl. He was only driving the pickup van. There is no

evidence to suggest that the applicant in any manner participated or committed crime in question. Although there is memorandum panchnama under Section 27 of the Evidence Act at the instance of present applicant but the said memorandum panchnama will not in any manner fix any criminal liability on the applicant. The applicant is in jail since the time of his arrest. There are no criminal antecedents. Therefore, the applicant deserves to be enlarged on bail, urged learned Counsel.

4. Mrs.Shinde, learned APP, on the other hand, invited my attention to CDR record showing the location of the places called through mobile number of the co-accused Vikram Takate. According to learned APP, the applicant was having knowledge that co-accused Vikram Takate was intending to do away with the life of deceased minor girl and despite that he helped him in the commission of offence.

5. Mr.Gokhale, learned Counsel for respondent No.2, on the other hand, also advanced the same submissions that the applicant had supported co-accused Vikram Takate and helped him in committing the murder of deceased minor girl. There being no merit in the application, the same is liable to be rejected.

6. Perused investigation papers. First of all, I may note from the record that memorandum panchnama was recorded on 20th February, 2021 of co-accused Vikram Takate under Section 27 of the Evidence Act and he had shown his willingness to produce rope used in the commission of offence and the mobile belonging to deceased minor girl.

7. Then there is statement of applicant under Section 27 of the Evidence Act wherein the applicant also expressed his desire to show the places where he had taken the deceased minor girl and co-accused Vikram Takate in pickup vehicle bearing registration No. MH 41 G 2942 and also the place

where co-accused Vikram Takate had strangled the deceased minor girl.

8. Then there is statement of Satish Samadhan Mali, who at the relevant time was working with a petrol pump as a filler boy. According to him, on 15th February, 2021 at about 9.00 p.m. jeep of Mahendra company bearing registration No. MH 41 G 2942 had been to the petrol pump for diesel and co-accused Vikram Takate was the driver to whom he identified when the said accused was shown to him by police.

9. It is pertinent to note that this witness nowhere says that either he had seen the applicant along with co-accused Vikram Takate or for that matter the applicant was the driver of pickup van as is the case of prosecution. Thus, so called memorandum panchnama of the applicant and the statement of Satish Mali are in direct conflict with each other.

10. As far as CDR location is concerned, the evidentiary value of the same will have to be looked into by the trial Court.

11. Having regard to the material on record, it cannot be held with a sense of satisfaction that the applicant in any manner abetted the death of deceased minor girl. Even if it is assumed for the sake of argument that he in any manner tried to cause the evidence disappear, then in that eventuality, he may not be liable under Section 302 of the IPC.

12. For the aforesaid reasons, I am inclined to allow the bail application. Hence, the following order :

ORDER

(i) Applicant- Saurabh Dattatraya Niphade shall be released on bail in C.R. No. 22 of 2021 registered with Pimpalgaon Baswant Police Station, Nashik on his executing P.R. Bond in the sum of Rs. 20,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial court proceedings regularly. ‘

(iv) Bail before the trial 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) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)