

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

**BAIL APPLICATION NO. 1370 OF 2020**

Ashutosh Jitendra Mishra ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Tripti R. Shetty, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATE : 18<sup>th</sup> MARCH, 2021**

**PER COURT:**

1. The applicant is arrested on 19<sup>th</sup> January, 2019 in connection with C.R. No. 505 of 2018 registered with Valiv Police Station, Dist. Palghar vide for offences under Sections 302, 201 r/w Section 34 of Indian Penal Code.

2. The complaint was lodged by the mother of the deceased. According to the complainant her son (deceased) was residing at Nalasopara with Deepak Malik, Kailas Wagh and Anil Sing. On 7<sup>th</sup> June, 2018 he did not respond to call, hence the complainant went to the premises where he was residing and the body of the deceased was found to have been stuffed in refrigerator. FIR was registered. Investigation proceeded. The accused were arrested.

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3. The supplementary statement of the complainant was recorded. In which she stated that the deceased was working with the applicant who is builder. The deceased was paid the less commission hence, there were quarrels between the deceased and the applicant. This information was allegedly given to her by the deceased in the past. Statements of several witnesses were recorded. On completing investigation, charge-sheet is filed.

4. Learned counsel for the applicant submitted that there is no direct evidence. The case is based on circumstantial evidence. The applicant has been falsely implicated in this case. Except the memorandum statement of co-accused, which is not admissible in evidence, there is no cogent evidence against the applicant. The name of the applicant was not reflected in the FIR. In the supplementary statement, the complainant has referred to his name. Assuming that the applicant has been referred to as a person with whom the deceased was employed that cannot be considered the strong motive to commit crime.

5. Learned APP however submitted that the material on record suggest that the applicant had motive to commit crime. The victim was killed. There is circumstantial evidence which indicate involvement of the applicant. The prosecution is relying upon the

CDR, which refers to conversation between the applicant and accused No.4. There were continuous exchange of calls between accused. It is submitted that the applicant is having criminal antecedents. Seven cases were registered against him in the past. One of them for offence under Section 302 r/w Section 115 of IPC.

6. Learned counsel for the applicant submitted that the case under Section 302 r/w Section 115 of IPC had emerged in respect to the panchanama under Section 27.

7. I have perused the documents on record. Undisputedly case is based on circumstantial evidence. The alleged motive is not corroborated by any strong evidence. The prosecution is primarily relying upon the CDR. However apart from that there are no strong circumstances to show the complicity of the applicant. Considering the factual matrix of this case, further detention of the applicant is not necessary. Case for grant of bail is made out. Hence, I pass the following order:

### **ORDER**

- (i) Criminal Bail Application No. 1370 of 2020 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 505 of 2018 registered with Valiv Police Station, Dist. Palghar on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. for a period of six months and thereafter, once in three months on first Saturday of the month between 11:00 a.m. to 1:00 p.m till further order;
- (iv) Application stands disposed of accordingly.

**(PRAKASH D. NAIK, J.)**