

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

BAIL APPLICATION NO. 1132 OF 2020

Wali Ahmed Mashakali Sayyed	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Ms. Gayatri Gokhale a/w Mr. Devendra Kuber i/b. Mr. Faisal Shaikh,
Advocate for the Applicant.

Mr. S. S. Pednekar, APP for the Respondent – State.

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CORAM	:	PRAKASH D. NAIK, J.
DATE	:	15 th MARCH, 2021

PER COURT:

1. This is an application for bail in C.R. No. I – 110 of 2020 registered with Rabale Police Station, Navi Mumbai for offences under Sections 302, 201 r/w Section 34 of Indian Penal Code (for short “IPC”). The applicant was arrested on 6th March, 2020.

2. The case of the prosecution is that, on 13th February, 2020 the informant who was on duty at construction site noticed one dead body floating in mud of creek. He immediately Informed police at NRI Sagari Police Station. The dead body was removed from mud. It was of male aged between 30 to 35 years and was not identifiable. Police found injuries on the neck of the body. The FIR was registered under Section 302 of IPC against unknown persons. Photographs of

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the dead body were circulated. It was revealed that missing complaint was filed with Rabale Police Station that Khadak Bahadur Singh was missing from 9th February, 2020. The said complaint was filed by the wife of the deceased. The wife and the daughter of deceased identified the body on the basis of clothes worn by him. Apparently, during the course of investigation, the applicant and co-accused were arrested on 6th March, 2020.

3. The case is based on circumstantial evidence. There is no eye witness to the incident. The charge-sheet indicate that, deceased was suspecting that the co-accused Kailash Kharat was having illicit relationship with his wife. On the day of incident there was confrontation between Kailash and the deceased in the presence of his wife. Thereafter, the husband of the complainant was missing.

4. Learned advocate for the applicant submitted that, the entire case is based on circumstantial evidence. There is no cogent evidence against the applicant. The prosecution is relying upon the recovery of weapon at the instance of the applicant which was conducted on 11th March, 2020. There are no blood stains on the weapon. Apart from that there is no evidence against the applicant. There are no criminal antecedents against the applicant. He had no enmity with the deceased.

5. Learned APP submitted that statement of the wife of deceased was recorded under Sections 161 & 164 of Cr.P.C. She has stated that her husband was suspecting that Kailash Kharat was having relationship with her. She referred to incident of 9th February, 2020. The co-accused was last person seen in the company of the deceased. The case of the prosecution is that the co-accused Kailash and Jay Chavan with the assistance of other accused had assaulted the deceased by knife. There is recovery of weapon from the co-accused. C.D.R. report shows the involvement of the applicant and the co-accused. As reflected in the First Information Report and the documents on record, the case is based on circumstantial evidence. The statement of the wife of deceased attributes motive to the co-accused and she has stated that the deceased and the co-accused were together and thereafter he was missing. She has not admitted that there was any illicit relationship between her and the co-accused Kailash Kharat. There is recovery of weapon from the applicant which had occurred on 11th March, 2020. There are no blood stains on the weapon. Co-accused Jayshankar Chavan has been granted bail by this Court vide order dated 25th January, 2021. The evidence collected against the applicant is not enough to continue the custody of the applicant. Hence, Bail can be granted to the applicant.

ORDER

- (i) Bail Application No.1132 of 2020 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. I – 110 of 2020 registered with Rabale Police Station, Navi Mumbai on executing PR. 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 three month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The applicant shall not tamper with the evidence.
- (v) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (vi) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)