

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 1240 / 2020

Rajendra Prasad Shivyadna Tiwari .. **Applicant**

Versus.

The State of Maharashtra & Ors. .. **Respondents**

Mr. Mahesh Vaswani a/w Mr. Rajesh More, Shreya Tiwari i/by Dharini Nagda, Advocate for the Petitioners.

Mr. Y.M. Nakhawa, APP for State.

Mr. Praful Panditrao Jadhav, A.P.I. and Mr. Ravindra Patil, A.S.I., Naupada Police Station.

CORAM : SANDEEP K. SHINDE J.

DATE : 14th OCTOBER, 2021.

P.C. : -

1. This is successive bail application.

2. Applicant seeks his enlargement on bail in Crime No. 234/2018 registered with the Naupada Police Station, for the offences punishable under Sections,

302, 201, 363, 364, 365, 120-B of the Indian Penal Code.

3. Prosecution case in brief, is that Applicants' daughters' love affair with the deceased, Surendra was disliked by Applicant. Thus, alleged Applicant conspired with co-accused to eliminate Surendra (deceased). Eventually, deceased was looking out for rental accommodation. On a pretext of showing him residential premises, he was called at one place. In furtherance, deceased was abducted in a car by the Applicant and co-accused. Whereafter he was confined in a room, adjacent to 'Sonu Garage' at Mulund. The car was owned by Mr. Sawant, who said Applicant had taken his car on 14th July, 2019. Surendra (deceased) was assaulted in a room and detained therein for hours, in intervening night on 14th and 15th July, 2019. Whereafter, the Applicant and the deceased allegedly went the Mulund Railway Station in a tempo and boarded Kasara bound train. CCTV footage had

captured at Mulund Railway Station, when retrieved revealed that the deceased was in the company of Applicant on 16th August, 2018. Prosecution case is that the Applicant to conceal his identity had covered his face with blanket. However, one Ruchi Yadav, friend of Applicant's daughter identified the Applicant, when the CCTV footage was retrieved and panchanama to that effect was drawn. Prosecution had recovered a blanket from the house of the Applicant. Further it is Prosecution case that Applicant and the deceased commuted in Kasara bound train and in between two stations, Applicant allegedly pushed Surendra out of the running train. Though, his body was found on the railway track, Police could not contact his relatives, nearly for seven days for want of his identity. At the material time, deceased was allegedly wearing blue jeans pant. Prosecution would claim that the CCTV footage shows a blue jeans pant was worn by the deceased, when he boarded the train at Mulund

Railway Station with Applicant. Soon after the incident, Applicant went to Dubai. That since the whereabouts of Surendra (deceased) were not traceable, a missing complaint was lodged by Applicant's daughter, who was in love with the Surendra.

4. Be that as it may, the Prosecution case is founded on the circumstantial evidence and the theory of 'last seen together'. It may stated that although the CCTV footage at Mulund Railway Station, imply that Applicant and deceased boarded Kasara bound train altogether, but there is no evidence on record to suggest that the Applicant had pushed the deceased out of the running train in between two Railway Stations and died, due to fall from the train. There are no eye witnesses to support this allegation. It is inferential fact, The Applicant is in custody since three years and two months. It is informed that Prosecution cited about 25

witnesses in support of the charge, and thus trial may not conclude in near future.

5. Correct that since daughter of Applicant is star-witness, Prosecutions' apprehension that Applicant will win over daughter, if released, cannot be said to be unfounded. Yet a fact cannot be ignored that the case is resting on the circumstantial evidence and as stated above that nobody had seen the accused had pushed deceased out of the running train. Further since the Applicant has been incarcerated for three years and two months and in absence of any criminal antecedents, in my view a case is made out for releasing the Applicant on bail.

O R D E R

(i) The applicant shall be released on bail in Crime No. 234/2018 registered with Naupada Police Station, on executing PR bond for the sum of Rs.50,000/-with one or more sureties in like sum.

(ii) The applicant shall report to the Investigating Officer twice a month i.e. Second and Fourth Monday of the month commencing from October, 2021 between 11:00 am. to 01:00, till the trial is concluded.

(iii) The Applicant shall file an affidavit that he shall not attempt to influence the daughter, a witness of the Prosecution in any manner and would stay away at such other place. It is made clear that any attempt by the Applicant to influence the daughter, if the Prosecution shall move an application, seeking for cancellation of his bail.

(iv) The Applicant shall deposit his passport with the Investigating Officer within two weeks from his release from the jail.

(v) The applicant shall furnish particulars of his new residential address and contact details to the

Investigating Officer forthwith.

(vi) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

6. Application is allowed and disposed of accordingly.

7. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)

Najeeb..

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by MOHAMMAD
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