IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1700 OF 2020

Dnyaneshwar Prakash Borse .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Shailesh Kharat, for the applicant.
Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE :1st April 2021.

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.235 of 2018 registered at Malegaon Chavani Police Station, Nashik, on 15/12/2018 under sections 302, 201, 202 of the Indian Penal Code. The applicant was arrested on 17/12/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Shailesh Kharat, learned counsel for the applicant and Ms. Pallavi Dabholkar, learned APP for the State.

3. Prosecution case is in respect of murder committed by the applicant of his father. Motive behind the murder was that the deceased was allegedly harassing the applicant's wife and applicant's mother and therefore getting annoyed the applicant committed his murder.

4. Learned Counsel for the applicant submitted that there is hardly any evidence against the present applicant. There are no witnesses who had seen the applicant assaulting the deceased. There is nothing incriminating about the applicant having been last seen together with the deceased. He submitted that there is alleged recovery of knife at the instance of the present applicant. He submitted that mud from the well from where the knife was recovered was sent for CA report. Similarly there are allegations that the applicant had burnt his clothes at a different place from the spot of incident. The earth from that place was also sent for C.A. report. The C.A. report shows that the earth collected

from the spot where the clothes were burnt matched with the earth on the knife. He submitted that knife was recovered from the well and not from the place where the clothes were burnt. Therefore the recovery of knife is an extremely suspicious circumstance. He further relied on the order passed by this Court (Coram: A.S. Gadkari, J.) in Criminal Bail Application No. 734 of 2018 in the case of Siddanth Dnyaneshwar Ganore Vs. The State of Maharashtra to contend that this Court had taken a view that if C.A. report did not support case of prosecution, then such circumstance cannot be relied on for denying bail to the accused. In that case only circumstance was of 'last seen together' and that was held to be not sufficient to deny bail.

5. Learned APP opposed this application. She submitted that there are statements of witnesses who had not only seen the applicant following the deceased but also had heard the applicant threatening the deceased to commit his murder. She therefore submitted

that this evidence is sufficiently strong. The dead body was immediately found. Therefore there is proximity of time when the applicant was seen threatening the deceased. She further submitted that recovery of knife is also important in this case.

6. I have considered these submissions. With the assistance of both learned Counsel I have perused the entire charge-sheet. In my view, C.A. report does not help the case of the applicant at this stage. There is direct connection between the blood found on the knife and blood group found on the clothes of the deceased. Besides this, as rightly pointed out by learned APP, there are statements of important witnesses in this case. They are Bharatabai Kisan More, Rajabai Dayaram More and Kalabai Namdeo Gaikwad. They have stated that, on 14/12/2018, at about 7.30 p.m, the deceased was proceeding towards Adivasi area for drinking liquor. He was followed by the present applicant. He was hiding himself and keeping watch on the deceased. They have

further stated that when the deceased had consumed liquor and was going on his cycle they saw the applicant following him. There was verbal altercation between the deceased and the applicant. At that time the applicant had said that he would commit murder of the deceased. These witnesses have categorically stated that they had seen the applicant and deceased together and had heard the applicant saying that he would murder the deceased. Their statements are recorded on 16/12/2018.

7. The FIR in this case was lodged on 15/12/2018 at about 6.50 p.m. Therefore it appears that these three witnesses have immediately given their statements on the next day. They have not given these statements as an after thought. Therefore there is no force in the submissions that since the applicant was son of the deceased there was nothing incriminating in both of them having been seen together by these witnesses.

8. In this particular case the applicant had

followed his father and also had threatened to commit his murder. Murder was committed within that night itself. The post mortem notes show that the deceased had suffered multiple stab wounds on neck as well as near face. The cause of the death was " terminal cardiac respiratory arrest due to aspiration of blood due to cut on trachea due to injury to throat". Thus the post mortem notes are in consonance with the prosecution story. The dead body was sent for post mortem at about 3.30 p.m. on that day. At that time rigor mortis was present. Therefore death occurred within a short time after the applicant was seen threatening the deceased.

9. The knife as mentioned earlier was recovered at the instance of the present applicant. All these circumstances form a complete chain against the present applicant.

10. Submissions that the prosecution case is doubtful as mud where clothes were burnt was found on

the knife, will have to be tested during trial. But it also depends on when the applicant had thrown that knife in the well; whether it was before or after burning the clothes.

11. In this view of the matter, the observations in the bail order, relied on by the learned Counsel for the applicant does not help the applicant. The observations in that case were restricted to the facts in that case. Moreover, in that case the only circumstance was of 'last seen together'. While in the present case, the theory of last seen together was made more serious because of the utterances of the present applicant. Besides there is a cogent material in the form of recovery of knife having same blood group as that of the deceased. In this view of the matter no case for bail is made out.

The application is rejected.

(SARANG V. KOTWAL, J.)