

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

BAIL APPLICATION NO. 2418 OF 2019

Vasant Tukaram Gopale

..Applicant

v/s.

The State of Maharashtra

..Respondent/s

Mr. Satyavrt Joshi for the Applicant .

Mr. S.V.Gavand, APP for the Respondent-State.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : JULY 19, 2021.

P.C.

1. This is an application filed under Section 439 of Cr.P.C. by the aforesaid Applicant who is facing trial for the offences under Section 363, 366, 302 and 201 of IPC. The case of the prosecution is that the Applicant herein had kidnapped the minor son of the first informant and had thrown him into Chaskaman Canal at Rajguru Nagar, Khed, Pune and thereby committed his murder.

2. Shri Joshi, learned Counsel for the Applicant states that the case of the prosecution is based only on circumstantial evidence. He states that the prosecution has relied upon the CCTV footage, however, there appears to be material discrepancy in the time. He

further contends that the statement of the mother of the victim was recorded after about 15 days from the date of the incident. He therefore contends that no implicit reliance can be placed on the CCTV footage and on the statement.

3. Per contra, the learned APP states that there was motive for committing the crime. He further contends that the Applicant was seen going away with the child, and the last seen circumstance as disclosed in the statement of the mother coupled with CCTV footage prima facie shows involvement of the Applicant in commission of the offence.

4. I have perused the records and considered the submissions advanced by the learned Counsel for the Applicant and the Id.APP for the State.

5. The father of the deceased had lodged an FIR on 15.08.2018 stating that his 10 years old son had gone missing. He suspected that his son was kidnapped by some unknown person. Hence FIR was registered against an unknown person for kidnapping the

minor son of the first informant.

6. Subsequently, the body of the deceased was found and charge under Section 302 came to be added. The CCTV footage indicates that the Applicant was seen proceedings towards the canal i.e. scene of offence, on his motorcycle along with the victim. The statement of the mother of the deceased also prima facie indicates that the Applicant used to sexually abuse her and that when she opposed, he had threatened to destroy her life. Her statement clearly indicates that on 15.8.20218 at about 12.00 to 12.30 pm the Applicant had come to her house and that she had seen her son going along with the Applicant on his motor-cycle, Her statement indicates that her son had not returned and when she had questioned the Applicant about the same, he had told her that he had sent him home after giving some eatables.

7. The statement of mother of the victim prima facie reveals that the victim was in company of the Applicant immediately before he went missing. The CCTV footage prima facie reveals that the Applicant was seen proceeding towards the canal with the deceased on his motorcycle, The minor discrepancy in recording

of time of the CCTV footage has been explained by the prosecution and the said discrepancy cannot be a reason for disbelieving the statement of the mother and or disregarding the CCTV footage.

8. The aforesaid circumstances, particularly the motive and last seen circumstance, prima facie shows involvement of the Applicant in commission of the Crime which is of serious nature.

9. Considering the nature and gravity of the offence, I am not inclined to grant bail to the Applicant. Hence the application is dismissed. Learned Counsel for the Applicant has expressed his apprehension that the trial court may be influenced by the observations made in the order. Suffice it to say that the aforesaid observations made while deciding bail application are always prima facie in nature and not an expression on merits of the matter.

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(ANUJA PRABHUDESSAI, J.)