

Neeta S.
Sawant

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Bail Application No. 3013 / 2019

Ramesh Narayan Vishe

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. Satyan Pille, Advocate for the Applicant.

Ms. Sharmila Kaushik, Advocate for the Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : 15th FEBRUARY, 2021.

P.C. :-

1. Applicant – Accused in Crime No. 108/ 2019 registered with Murbad Police Station for the offences under Sections 302, 201, 203 of the Indian Penal Code, 1860, is seeking bail.
2. Applicant was apprehended on 21st March, 2019.
3. Investigation is over and the final report has been filed.

4. Heard. Learned Counsel for the Applicant and learned APP for the State.
5. Kalpesh Chaudhary is deceased. His body was found in highly decomposed state, on 21st March, 2019 in forest at Village Kakadpada, Taluka Murbad, Dist. Thane.
6. Doctor could not opined cause of death may be because the body was decomposed also chewed by animals. However, Vitthal Ramchandra Chaudhary identified it, that of his son, Kalpesh Chaudhary.
7. Complaint filed by Vitthal Chaudhary (father of deceased) on 21st March, 2019, suggests that Kalpesh (deceased) had love affair with the girl and her brother-in-law, Nandu Mharse was disfavouring it. Complainant alleged Nandu Mharse and brother of the girl had once beaten up Kalpesh, seven months before the present incident. Complainant was therefore, feeling that his son was eliminated by the relatives of girl and his body was thrown in a ditch to cause disappearance of the evidence. He reported his son was missing since evening of 3rd March, 2019. In supplementary statement recorded on

30th March, 2019, complainant reported and told that when he was searching his son, friend of his son Mahesh Hindurao told him that on 3rd March, 2019, they were together, up to 10:30 pm. and thereafter Kalpesh went to the house of Pushpa Baliram Mharse (relative of deceased) and thereafter he met applicant, who then told him that Kalpesh was assaulted by Nandu Mharse.

8. Pushpa Mharse stated that Kalpesh (deceased) had been to her house on 3rd March, 2019 at 10:30 pm., but he left the house alongwith the applicant sometime after 10:30 pm.

9. I have perused the supplementary statement and FIR. The FIR suggests that complainant was feeling relatives of girl were instrumental in eliminating his son. However, in the supplementary statement, he would allege that the applicant was harbouring grudge against his son and would further say that since the applicant had illegally fell tress, to the dissatisfaction of the deceased. As such in supplementary statement, it appears, complainant was suspecting that his son was murdered by the applicant.

10. I have perused the final report.

11. It may be stated that on 9th March, 2019, complainant reported to the police that his son had left the house at around 8:30 pm. on 4th March, 2019 after dinner and since then his whereabouts were not known; whereas in the FIR, he would say that his son was missing since 3rd March, 2019. This material contradiction in missing complaint and FIR has not been explained by the prosecution at all. This contradiction, infact goes to the root of the prosecution case. Be that as it may, the learned Prosecutor has argued that deceased was last seen in the company of the applicant on 3rd March, 2019. As against this, the father in missing complaint, reported that deceased left the house on 4th March, 2019 after taking dinner.

12. Prosecution has recorded statements of many witnesses. However, their versions are inconsistent and prima facie do not corroborate each other. I have perused the statement of Sandesh Baliram Mharse, Pushpa Baliram Mharse and Mahesh Hindurao. Statement of Pushpa Mharse recorded on 22nd March, 2019 (a day after the registration of FIR) indicates Nandu @ Bala Mharse was not approving love affair of Kalpesh (deceased) with his sister-in-law. Surprisingly in her statement recorded on 3rd March, 2019, she would state that quarrel had ensued between deceased and the applicant on

account of felling of trees by the applicant whereafter applicant chased the deceased in the direction of the spot, where the dead body was found.

. A statement of Shraddha Suresh Wangar recorded on 16th March, 2019, shows that on 4th March, 2019 at 04:30 pm., she saw Kalpesh on Motor Cycle, proceeding towards Sheduli. Besides a statement of Balu Hari Mukne suggests that his relative Sagar Mukne informed him on the phone that he had seen deceased at Ghodegaon, Pune on 11th March, 2019.

13. Thus, in view of the statements of witnesses, it is uncertain as to from which date, the deceased was missing. Furthermore if Sharaddha Wangar, had seen the deceased on 4th March, 2019 riding a Motor Cycle, then the complainant's statement that his son was missing from 3rd March, 2019 becomes a suspicious. Even otherwise in missing complaint, he reported deceased was missing from evening of 4th March.

14. Thus, after going through the statements of witnesses the prosecutions' case that the deceased was seen last in the company of the applicant is quite uncertain. The statement of witnesses referred

above, prima facie do not support the prosecution case that he was last seen in the company of the applicant on 3rd March, 2019.

15. Be that as it may, the investigation in the case is wholly defective and has not been carried out in just and fair manner. That since the prosecutions' case is based on circumstantial evidence, final report has still more loose ends. It is apparent that investigation has not been carried out in proper direction, for the reason, best known to the Investigating Officer.

16. Let a copy of this order be forwarded to the Superintendent of Police having Supervisory Jurisdiction over the Murbad Police Station, who shall look into the final report and shall take appropriate steps to ensure just and fair investigation in the interest of justice.

17. Resultantly, the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.30,000/- with two sureties in the like amount;

(i) The applicant shall furnish his residential address as well as permanent address and contact details to the investigating officer

forthwith;

(ii) The applicant shall cooperate in the investigation and report to the Investigating Officer as and when called;

(iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

18. Application is allowed and disposed of accordingly.

19. Learned APP as well as Registry of this Court shall forward a copy of this order to the Superintendent of Police having Supervisory Jurisdiction over the Murbad Police Station.

20. 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