

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.170 OF 2022

BHATU @ SOMNATH RAMESH KUWAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondent : Ms. V. S. Choudhari
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CORAM : S. G. MEHARE, J.

DATE : 11-11-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.

2. The applicant has been arraigned as an accused of the offence of murder of the wife of his friend/complainant. The incident happened on 26.09.2021 in the afternoon in the bedroom of the house of the complainant. It has been alleged in the first information report that fifteen days before the incident, the accused demanded Rs.50,000/- from the complainant. The complainant showed his inability to pay him a hand loan of Rs.50,000/-. Hence, the applicant became annoyed. He told him that he had helped him many times; therefore, he would have to help him. It has been further alleged against the accused that

when the complainant showed his inability to pay the hand loan, he started demanding money from his deceased wife. He was making her phone calls and demanding her hand loan. On the day of the incident, the complainant and his sons went to purchase old tiles. When they returned home at 1.00 p.m., they saw the deceased lying in the pool of blood in the bedroom. The blood was oozing from her hand and neck. When he called her, she did not respond. Finally, it was confirmed that she had died. On the very same day, the first information report was lodged. The police station Deopur, District Dhule, registered a crime for the offence punishable under Section 302 of the Indian Penal Code and then put the wheels of the investigation into motion. The applicant was arrested on 08.08.2021. Since then, he has been behind bar. The Investigating Officer has collected the evidence and submitted the report under Section 173 of the Code of Criminal Procedure before the Court.

3. The prosecution case mainly rests on the last-seen theory. The witness Kavita Bai Suresh Patil, who was a tenant residing on the first floor of the house of the complainant, stated that on the day of the incident, she and the deceased went to purchase the spectacles. They returned home at about 12.30 to 1.00 p.m. When she was in the gallery of her house, she saw the applicant entering the house and leaving the house within ten minutes. Similar is the statement of her daughter. The police collected incriminating

evidence like a knife, blood, hairs of the deceased and one Android mobile handset from the spot of the incident. The police also collected CCTV footage from the house of one witness, namely Rajendra Chindhuji Patil. The technician took the CCTV footage of the camera from his house in a pen drive. He stated that in the CCTV footage, he saw that the accused came inside the house and went away. However, when the Investigating Officer tried to play pen drive, it could not run. Therefore, he sent it to the Cyber Police Station, Dhule, to retrieve the contents of the CCTV footage. However, CCTV footage did not open. Besides the above evidence, the prosecution has collected a postmortem report, wherein about 32 injuries have been shown on the person of the deceased. On the basis of this material, the prosecution arraigned the applicant as an accused.

4. The learned counsel for the applicant would submit that the mother-in-law of the deceased, namely Gitabai Amrut Patil, as per the prosecution case itself, was present in the house. She stated that she was in the kitchen. He referred to the map of the incident and pointed out that the kitchen was on the western side of the house. He has vehemently argued that it is impossible not to hear the screaming of a person who was brutally assaulted, causing him 32 injuries. Therefore, she is a planted witness. As far as the statement of witness Kavita Bai is concerned, her statement has been contradicted while giving a statement under Section 164 of

the Code of Criminal Procedure. She is stating nothing before the Judicial Magistrate about seeing the applicant entering and leaving home. He would also point out that the prosecution has absolutely no evidence to believe that the tenant from the first floor can see the person entering the home. Therefore, the statement of Kum. Ashvini Suresh Patil also cannot be believed. He would also refer to the spot panchnama and vehemently argue that if one has to go to the bedroom where the alleged incident happened, he has to cross the kitchen and hall. The kitchen has a window, which opens towards the platform from where one has to enter the house. The spot panchnama shows that one has to enter first in the hall and then to the passage, whereas the bedroom, which was the spot of the incident. It is the theory of the prosecution that the applicant entered the home, and then within ten minutes, he caused 32 injuries and that too without screaming by the deceased. He would also argue that the prosecution has no case that the mouth of the deceased was gagged. He would argue that on the basis of suspicion, the applicant has been arraigned as an accused. The charge sheet has been filed, but the Investigating Officer has not collected the chemical analyzer's report. The evidence collected at the instance of the applicant is not voluntary. The applicant has been behind bars since 08.08.2021. That apart, the prosecution has even no evidence of fingerprints. It also appears that the Investigating Officer did not take pain to collect the fingerprints of

the accused to make the circumstantial evidence strong. He would submit that considering the evidence collected by the applicant, the applicant has a *prima facie* good case for bail. So he may be released on bail.

5. The learned A.P.P. has strongly opposed the application. She would submit that the mother of the deceased is 82 years old. Therefore, there is a great possibility of her hearing impairedness. She would submit that the clothes of the applicant were bloodstained. There are two witnesses consistent on the fact of seeing the accused entering and leaving the house. The motive of the applicant is also clear that he was paying the hand loan to the complainant, but the complainant did not pay him the hand loan. Hence, he was hurt. One of the sons of the deceased had also received the phone call of the accused and he heard that he was demanding money to the deceased. She would submit that the deceased had been brutally murdered, causing in all 32 injuries. She has lost her life for no reason. She prayed to reject the application.

6. The Hon'ble Supreme Court in the case of *Prasanta Kumar Sarkar vs Ashish Chatterjee and another*, (2010) 14 SCC 496, has laid the law that while considering an application for bail, the following factors shall be borne in mind,

- (i) where there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if release on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

7. Normally, circumstantial evidence is a weaker piece of evidence. The prosecution has to prove the chain of circumstances. Herein the case, the motive was the failure to pay the hand loan. One of the witnesses had contradicted the fact of seeing the applicant entering and leaving home before the learned Magistrate. Surprisingly enough, the material evidence that the recorded CCTV footage has been corrupt. It is a serious matter. Such conduct of the prosecution raises doubt. The contents of the CCTV footage can not be easily corrupted. The prosecution also has no evidence of fingerprints on the handle of the knife. Considering the material collected by the Investigating Officer in its entirety, along with the settled principles of law, while considering the bail application, the Court is of the view that the

applicant has prima facie case for bail. Hence, keeping the applicant behind the bar for the further period would be fruitless. The application deserves to be allowed. Hence the following order:-

- i) The application is allowed.
- ii) Applicant Bhatu @ Somnath Ramesh Kuwar be released on bail, on furnishing PB and SB of Rs.1,00,000/- with one or two solvent sureties of the like amount, in C.R.No. 108 of 2021 registered with West Deopur Police Station, District Dhule, for the offence punishable under Section 302 of the Indian Penal Code, on the conditions that,
 - (a) He shall not tamper with the prosecution witnesses.
 - (b) He shall attend the trial on each and every date.
 - (c) He shall not contact the prosecution witnesses in any way.

**(S. G. MEHARE)
JUDGE**

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