

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.201 OF 2022
WITH APPLN/931/2022 IN BA/201/2022

NAVNATH DHONDU NIKAM
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Chaitanya C. Deshpande h/f.
Mr. Govind M. Sharma
APP for Respondent : Mr. V. S. Badakh
...

CORAM : S. G. MEHARE, J.

DATE : 22-06-2022

PER COURT :-

The learned A.P.P. states that whatever CDR and SDR reports were available are already with the record. Except that report, the Investigating Officer has no other report; hence, he did not want to call for CDR and SDR as requested by him on 31st March 2022 and he is ready to proceed with the matter.

2. Heard the learned Counsel for the applicant and learned A.P.P. for the respondent/State as well as learned counsel, who is permitted to assist the learned A.P.P., at length.

3. The learned Counsel for the applicant submits that the prosecution has no evidence against the applicant, except his

statement under Section 27 of the Indian Evidence Act. He has also pointed out that none of the witnesses has been identified by the accused in the test identification parade. The relevant investigation has been completed and the charge-sheet is submitted to the Court. The prosecution has no evidence of conspiracy. The CCTV footage does not show that the applicant-accused was present at the time of alleged incident. Unfortunately, he was ahead the vehicle in which the deceased was allegedly abducted and on the the petrol pump, the same vehicle and his motorbike filled petrol. After filling the petrol, the applicant went to his home. Only on suspicion, he has been arraigned as an accused and under pressure and without drawing panchnama under Section 27 of the Indian Evidence Act, recovery of bag belonging to the deceased is shown to have been made at his instance. He referred to the test identification report at page no. 483, more particularly, page no. 486, and would point out that at some time it is alleged against him that the present applicant was on motor bike, and also in the four wheeler at the other instance. He has referred to various statements of witnesses and would point out that none of the witnesses has given the description of the accused, who has allegedly last seen to him in the sequel of the incident in completing the alleged murder. The applicant is innocent and has been implicated only on the suspicion.

4. Per contra, the learned A.P.P. for the respondent/State and learned counsel to assist him, have vehemently argued that there is CCTV footage and evidence showing that the applicant was on the motorbike which was shown ahead of the car in which the deceased was abducted. The applicant was seen on the motorbike which was used in the crime. He has referred to the statements of Vitthal Namdev Gadhe and Vishal Pandurang Shahane, who were witnesses, who had seen the deceased lastly in the company of the accused. He would rely on the recovery panchnama drawn under Section 27 of the Indian Evidence Act, at the instance of the applicant and also point out that the bag recovered at the instance of the applicant has been identified by the son of the deceased. This is a strong link to prove the involvement of the applicant in the crime. He has strongly relied on the panchnama dated 17.03.2021. It is a panchnama drawn at the instance of co-accused Juned @ Javed Babu Shaikh, who has shown various spots and also disclosed the communication amongst the accused. However, learned A.P.P. was not able to satisfy the Court its evidentiary value. He has also referred to the statement of the witnesses to satisfy the Court that these witnesses are material, however, unfortunately none of the witnesses has described the person, they had seen on the date of the alleged incident. He has strongly opposed the application contending that there is strong circumstantial evidence supported with the recovery of bag of the

deceased at the instance of the applicant and, thus, prayed to dismiss the application.

5. The prosecution has a case of the last seen together and the circumstantial evidence. The deceased was a businessman. It is alleged that one of the accused Aakash was his ex-employee. The prosecution though has collected the CCTV footage panchnama, wherein the applicant was seen, the applicant also admitted that he was traveling on bike at the relevant time but he went his home after filling the petrol in his bike. The witnesses Prashant Pandurang Shahane and Viththal Namdeo Gadhe, who are the star witnesses of the prosecution did not describe the person. They had seen. However, this witness, Prashant was called for test identification parade. The said report is at page no. 482 of the paper book. The last page no. 486 is material, which shows that he did not identify the present applicant. So far as the article collected at the instance of the accused under Section 27 of the Evidence Act is concerned, it is not substantial evidence, but it is a piece of corroboration. Except the recovery at the instance of the applicant, the prosecution has no other circumstantial evidence to believe the prosecution case at this juncture. That apart, the investigation is over and charge-sheet has been filed. Nothing is to be recovered and discovered from the applicant. In view of the facts of the case and after going through the relevant papers of

the charge-sheet, this Court is of the view that the application deserves to be allowed.

6. Hence, the following order -

- i) Application is allowed.
- ii) The applicant Navnath Dhondu Nikam shall be released on bail, on furnishing P.B. and S.B. of Rs.30,000/- with one or two solvent sureties of the like amount, in C.R.No. 137 of 2021, registered with Shrirampur Police Station, Ahmednagar, for the offence punishable under Sections 302, 363, 364, 396, 201, 120(B) of the Indian Penal Code, on the condition that, he shall attend the trial court on each and every date of hearing without excusable reason.
- iii) Bail before the learned Sessions Judge.
- iv) *Hamdust* allowed.

7. It is made clear that the observations recorded by this Court are restricted to the bail application and the trial court should not get influenced with these observations.

8. Criminal Application No. 931 of 2022 for assist to learned APP is allowed and disposed of.

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