

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

52 BAIL APPLICATION NO.420 OF 2022
WITH BA/423/2022

PRAKASH RACHAPPA SWAMI
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr Shivaji Bhimrao Bhapkar
APP for Respondent/State: Mr S.B. Narawade

WITH
BAIL APPLICATION NO.423 OF 2022

SHOBHA W/O RAMA YANALWAR
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr Shivaji Bhimrao Bhapkar
APP for Respondent/State: Mr S.B. Narawade

CORAM : S. G. MEHARE, J.

DATE : 27th JUNE, 2022

PER COURT :

1. Heard the learned counsel for the applicants.
2. The allegations against both the applicants are that they were in illicit relations with each other. The deceased was the hurdle in their relationship. Therefore, they plotted a conspiracy to finish the deceased. They called the deceased, took him with them in the four-wheeled car, killed him with a hammer, and then burned him. The offence came to light when the first informant saw the dead body lying in the field of one Ravi Patil within the Khatgaon Area. After recording the statement of the applicant/wife of the deceased the wheels of the investigation were put into motion. The Police have collected the evidence based on the statement of the accused, and the discovery of the hammer under section 27 of the Indian Evidence Act at the instance of accused Prakash. The

plastic bottle is recovered at the instance of accused Shobha, in which the petrol was filled, from the place shown by her. The circumstantial evidence of the prosecution is a post-mortem report, the statement of one tyre puncture repairer and the statement of the employer of accused Shobha that on the day of the incident, she did not turn up on duty after the first half. The learned counsel for the applicants would submit that the prosecution has no strong and enough circumstantial evidence. However, the confessional statement of the accused is of no use. No identification parade was held by the prosecution. The statements of the witnesses have been recorded belatedly. The applicants have been behind bars for more than one and a half years. The investigation is over. Therefore, they may be released on bail.

3. Per contra, learned APP would point out that at the instance of the accused, the weapons like a hammer and the plastic bottle in which the petrol was taken have been recovered. The circumstances are against the accused. There are statements of the witnesses saying that the applicant Prakash used to go to the house of the deceased, and there were quarrels. It is also pointed out that the statement of the son of the victim shows that applicant Shobha misled him that the deceased went to Delhi. The post-mortem report also corroborates the circumstantial evidence. The injuries on the head is a strong circumstance to link the use of the weapon at the hands of the accused. The offence is serious and committed with a cold-blooded mind. Therefore, the applicants should not be released on bail.

4. No doubt, the offence is serious. The entire case of the prosecution rests upon circumstantial evidence. Barring the recovery at the hands of

the applicants and the statement of the witnesses that taking the petrol in a plastic bottle and misleading the son of Shobha, the prosecution has no other direct evidence. While considering bail applications, the evidence cannot be evaluated. The reasons are to be recorded by Court without discussing the merits and demerits of the evidence. A prima facie case has to be seen by the Court. However, the fact remains that except the recovery at the instance of the accused, the prosecution has no evidence to link the accused with the alleged incident. The learned counsel for the applicants is correct in saying that the statement of the accused has no evidential value. The charge has also not been framed though the charge sheet is filed in the month of April 2021.

5. Considering all the above aspects, this Court is of the view that no purpose would be served by keeping the applicants behind the bar. Hence the following order.

ORDER

- (i) Both the applications are allowed.
- (ii) The applicants, Prakash Rachappa Swami and Shobha Rama Yanalwar be released on bail on executing PB and SB of Rs. 50,000/- (Rupees Fifty Thousand) each with one or two solvent sureties in the like amount, in connection with Crime No. 7 of 2021 registered with Ramtirth Police Station, Dist. Nanded for the offence punishable under section 302, 201 r/w 34 of the Indian Penal Code, on the condition that they shall not tamper with the prosecution witnesses. They shall not enter the place where the deceased was lastly residing.

- (iii) If any condition is breached, the prosecution will be at liberty to file the application for cancellation of bail.
- (iv) Bail before the learned Sessions Court.

[S. G. MEHARE, J.]

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