

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.329 OF 2022

Satyanarayan Rajendrarai Yadav .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Raviraj R. Paramane for the applicant.
Mr. S.H. Yadav, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 26th JULY, 2022

P.C:-

1 On 7/7/2015, a body of an unknown male person with multiple pieces with head decapitated was found in the garbage pit. The body was in advance state of decomposition and foul smell was emanating as a result of destruction of soft tissue at places, exposing bones, muscles, cartilage etc. It was subjected to an Inquest Panchnama and referred for post mortem. The post mortem report recorded evidence of ligature compression of neck, however reserved in the final opinion for cause of death. It refer to various pieces of the body in column no.17 and further record that the thoracic and abdominal organs are missing and few remains were converted into a homogeneous mass.

2 On the report being lodged with the CBD Belapur Police Station, Navi Mumbai, C.R.No. I-119 of 2015 came to be registered which invoked Sections 301, 201 r/w Section 34 IPC and the relevant sections of the Arms Act and the Bombay Police Act.

On suspicion, the applicant came to be arrested on 18/7/2015, and on completion of investigation, charge-sheet came to be filed on 23/12/2015. On 11/6/2019, the trial was directed to be expedited and concluded within three months and further extension was granted on 14/11/2019. However, at present, the trial is not concluded and it is informed on 10 witnesses being examined, it is in progress.

3 With the assistance of the learned counsel, I have perused the material compiled in the charge-sheet.

The subject C.R arraign three persons as accused and the applicant no.1 is arraigned as accused no.1. The material compiled in the charge-sheet reveal that the accused persons were well acquainted with the deceased, one Kartik Jaiswal, and all of them had taken shelter in a public toilet and in each other's company, they used to consume liquor. The deceased was assigned the job of cleaning of the toilet block located on the ground floor of Tower No.4 and 10 on CBD Belapur Railway station. However, since it was noticed that he was not sincere in his work and was always found in an intoxicated condition, the

work was taken out from him and it was entrusted to the brother of the present applicant.

This resulted in a constant quibble between the deceased and the applicant. The charge-sheet also reflect that the deceased was demanding money from the accused persons for consuming liquor. In the said toilet block, accused no.2 and wanted accused no.3 were taking shelter in the night. The deceased used to abuse them under influence of liquor and it is alleged that on this count, the accused persons were fed up of him and therefore, they hatched the conspiracy and eliminated him.

The charge-sheet allege that on 4/7/2015, the accused no.3 assaulted him by a wooden rod and thereafter, all the three accused persons strangulated him to death. They transferred the body into a washing room and thereafter, it is alleged that accused no.2 procured one scythe and with the help of accused nos.1 and 2 chopped the deceased and put the body parts into two plastic bags and threw it in the garbage pit with an intention to destroy the evidence.

4 The proforma charge-sheet implicate the present applicant in the above manner. However, when the charge-sheet is carefully perused, it can be seen that there is no material therein, to attribute him the said role.

5 The learned APP rely upon statement of one Sanjay Chavan recorded on 26/7/2015 but the said statement is of no

consequence, since the said person has stated that on 7/7/2015, when a foul smell was emanating and he was guarding the premises, one Manoj Yadav and another person were seen walking to garbage pit. However, he do not name the present applicant, though Manoj Yadav has been named by him. Another statement of Maruti Mange, about the harassment faced by the applicant, is also compiled in the charge-sheet, but merely because the applicant was harassed, it cannot be presumed, in absence of any positive evidence being compiled in the charge-sheet, that he has eliminated the deceased. The house search panchnama at the instance of the present applicant is of no consequence, since it is settled position of law that it is inculpatory, and as far as panchnama and Memorandum u/s.27 of the Evidence Act at the instance of the co-accused, shall also meet the same fate and as the narration therein, is not admissible in evidence.

6 In absence of any material being found in the charge-sheet, which implicate the present applicant for the offence u/s.302 and 201 IPC, he cannot be kept incarcerated only on the ground that the trial is in progress. The applicant is awaiting the trial to conclude since the date of the arrest, i.e. 7 years back.

 In absence of any material linking the applicant to the offence of murder, as well as destruction of evidence with which he is charged, he deserve his release on bail.

7 Needless to state that the above observations are *prima facie* in nature and restricted to be determination of the present application and in no way will preclude the trial Court from reaching an appropriate conclusion, on perusal of the evidence that will be placed before the Court. Hence, the following order :

ORDER

- (a) The Applicant – Satyanarayan Rajendrarai Yadav in connection with C.R.No.119/2015 registered with CBD Belapur Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (c) The Applicant shall continue to attend the trial on regular basis, unless and until exempted by the trial Court.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)