

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION No. 635 OF 2021****Mahesh Govind Karale****...Applicant****Vs.****The State of Maharashtra****...Respondent***** * * ***

Mr. Abhay Khandeparkar a/w. Rohit Mahadik a/w. Sarvesh Mittal a/w. Vaibhav Kulkarni and Mr. Nitin Dedhia i/b. Khandeparkar & Associates for Applicant

Mr. Ajay Patil, APP for the State.

PSI- S.K. Kamale- Kasarwadvalli Police Station

Coram : Sandeep K. Shinde, J.

Dated: 7th JUNE, 2022.

P.C. :

1. Heard Mr. Khandeparkar, learned counsel appearing for the Applicant and Mr. Patil, learned APP for the State.

2. The Applicant seeks his enlargement on bail, in connection with the Crime No. 329/2018 registered at Kasarwadavali Police Station, Thane for the offences punishable under Sections 302, 328, 120-B r/w. 34 of the Indian Penal Code.

3. Gopal Naik, was sweeper with Municipal Corporation and stayed with his wife Priya and their daughter in sweeper quarters.

Gopal, was brought to the civil hospital at 4.15 a.m. on 29th December, where he was declared dead before admission. The people who brought him, later identified as Priya (Accused No.1) and applicant her, paramour. Both left immediately, after filing in Gopal's details in the paperwork and telling the hospital staff, that he met with an accident. After, the post-mortem, indicates blunt force trauma to the head. Hospital authorities informed the police, about the matter. Police visited Gopal's house and found the daughter alone. They saw blood stains on the floor and attempts to clean up. Police were on look out for Priya. Investigation team tried to track the location of Priya and applicant's mobile, but their phones were switched off. Investigation revealed that Priya and applicant had been in relationship for about last six months. Inquires with witnesses- relatives, indicate Gopal had found about the affair and that it had led to frequent fights between them.

4. Indisputably, applicant was ordinarily residing at Karjat, District Raigad; whereas, Priya at Kalwa, Dist. Thane.

5. Mr. Khandeparkar, learned counsel appearing for the Applicant submitted, assuming but without admitting, that Applicant had been in relationship with accused No.1, nevertheless, there is no evidence

suggesting that in furtherance of conspiracy, he caused murder of deceased. Mr. Khandeparkar has taken me through the statements of next door neighbour and daughter of deceased, to submit that, on the fateful night nobody had seen the applicant in the company of accused No.1 in her house. Mr. Khandeparkar, to a large extent, relied on the statement of daughter of deceased, to contend that, had the incident of assault taken place in the flat, certainly daughter would have noticed the presence of the applicant. Mr. Khandeparkar submitted, neither daughter, nor neighbour had seen applicant, in the flat of the deceased, with accused no.1. Mr. Khandeparkar, therefore, submitted that, prosecution could not have implicated the applicant in the crime, solely on the allegation, that he was in relationship with Priya. Mr. Khandeparkar further submitted that applicant is in custody since 2018. He has no criminal antecedents and being permanent resident of Taluka Karjat, his presence for the trial can be secured by imposing conditions. Mr. Khandeparkar would, therefore urge that the applicant be released on bail.

6. Mr. Ajay Patil, countering the arguments of Mr. Khandeparkar, would submit, although the case is founded on the circumstantial evidence, the chain of events, formed of each circumstance, clearly point to criminal intent of the applicant that he conspired with accused no.1 to eliminate, deceased Gopal, who had found about his affair with ac-

cused no.1. Mr. Patil submitted, having regard to quality of evidence on record, against the applicant and gravity of offence, application deserves no consideration.

7. With the assistance of the learned counsel for the parties, I have perused the charge-sheet. Electronic evidence on record in the form of CCTV footage and panchnama suggests, that, on the fateful night body of the deceased was taken out from his flat, by duo, on scooty, driven by the applicant and accused no.1 . The footage fortifies this fact. The next door neighbour, identified the applicant and Priya, being witness to footage panchanama. Next CCTV footage at Civil Hospital captures the event, while applicant and Priya, both came together to the civil hospital and left the hospital together on scooty. This piece of evidence is enough to indicate/suggest, applicant's complicity in crime. It may also be stated that Call Detail Record show, at the material time, applicant was in Kalwa and duo were together. Additionally, conduct of the applicant also cannot be overlooked, inasmuch as applicant and accused No.1 were not traceable after the alleged incident.

8. Thus, in view of the evidence and the gravity of offence, which is punishable with life imprisonment or death. The application is rejected.

9. It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(Sandeep K. Shinde, J.)