

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 469 OF 2022

Tarkesh @ Munna Tanhanji Randhir ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr. Nitin Gaware Patil, for the Applicant.

Mr. A. A. Palkar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 24th JUNE, 2022

PRONOUNCED ON: 29th JUNE, 2022

ORDER:-

1. This is an application for bail in connection with CR No.580 of 2019, registered with Hadapsar Police Station, District Pune.

2. The applicant is arraigned for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") for having committed murder of Prakash Vilayatkar (the deceased) in furtherance of his common intention with accused no.1 Sarita, the wife of the deceased, and Rishikesh @ Chintya Kamble, the co-accused and four children in conflict with law.

3. The crux of the prosecution case is that the co-accused Sarita, the wife of the deceased, had extramarital relationship with the applicant Tarkes @ Munna. The deceased learnt about the alleged extramarital relationship and started to resist the same and, thus, abused, harassed and beat his wife Sarita. Co-accused Sarita, in turn, allegedly related the ill-treatment meted out to her, on account of said relationship, to the applicant and asked him to teach a lesson to the deceased. On 19th June, 2019, the applicant, co-accused and the children in conflict with law, picked up the deceased from the poultry form, where the deceased was working as a security guard. The applicant and his associates allegedly took the deceased near Ganga Nagar Canal and severely beat him. The deceased was left thereat. On the morning of 20th June, 2019, pursuant to an intimation, Dilip Gade, Assistant Police Insepctor, Hadapsar Police Station, lodged a report that an unknown person is lying in an unconscious state besides Mula-Mutha Canal. He was shifted to Sasoon Hospital, but declared dead.

4. Investigation commenced. Statement of Sarita, the wife of the deceased and the co-employees and the supervisors of

the deceased were recorded. As the investigation revealed the complicity of the applicant he was arrested.

5. The applicant has preferred this application for bail on the ground that there is no material to connect the applicant with crime. The entire case rests on circumstantial evidence. The circumstances arrayed against the applicant are not of such tendency as to show that it was the applicant alone, who had committed the act in all human probability. There is no complete chain of circumstances which unerringly points to the guilt of the accused. In any event, no intention to cause death of the deceased can be attributed to the applicant.

6. I have heard Mr. Gaware Patil, the learned Counsel for the applicant and Mr. Palkar, the learned APP for the State, at some length. With the assistance of the learned Counsels for the parties, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973, and the documents annexed with it and the material on record.

7. Mr. Gaware Patil, the learned Counsel for the applicant, submitted that the statement made by co-accused Sarita that there was an extramarital relationship between her and the applicant and that she had asked the applicant to teach a

lesson to the deceased and the latter had apprised her that he gave a good pasting to the deceased, is not legally admissible in evidence. Secondly, there is material infirmity in the prosecution case as on 19th June, 2019 the deceased had informed one of his colleagues that two persons had come to fetch him, which implied that the deceased had prior acquaintance with them. Therefore, it cannot be said that it was the applicant, who had fetched the deceased from his place of work. Thirdly, the identification of the deceased in the test identification parade by witness Amol Shelar is suspect as the memorandum shows that a person other than the public witnesses, who were called for the test identification parade, had taken the said witness in the hall where the applicant and other suspects were arrayed. Lastly, even if the prosecution case is taken at a par, according to Mr. Gaware Patil, at best, the intention of the applicant was to beat the deceased so as to teach him a lesson and deter him from harassing the co-accused Sarita.

8. Per contra, Mr. Palkar, the learned APP, would urge that there is ample evidence to show that the applicant had a strong motive to eliminate the deceased, in furtherance of the common intention with the co-accused. The learned APP

invited the attention of the Court to the injuries found on the person of the deceased. As may as 37 external injuries were noted by the Autopsy Surgeon. According to the learned APP, the injuries belied the claim on behalf of the applicant that there was no intention to cause death of the deceased.

9. From the perusal of the postmortem report, especially the external injuries noted by the Autopsy Surgeon, it becomes evident that the deceased was belaboured to death. The deceased was beaten up mercilessly by more than one person and for a fair amount of time.

10. Since Sarita, the wife of the deceased, came to be impleaded as an accused, the submission on behalf of the applicant that the statement of Sarita made before the police cannot be legitimately admitted in evidence carries some substance. However, it is imperative to note that there is other material to show that the applicant allegedly had extramarital relations with co-accused Sarita. The statement of the daughter of Sarita specifically adverts to the said fact. Even Venutai Kadukar, the mother of Sarita, has also stated about the said liaison. The statement of Venutai, in a sense, constitutes an extra-judicial confession allegedly made by Sarita wherein substantial prosecution version finds an echo.

11. In the aforesaid view of the matter, at this juncture, there is *prima facie* material to show that the applicant had a strong motive. To add to this, there is material to show that the co-accused Sarita had asked the applicant to teach a lesson to the deceased.

12. It would be contextually relevant to note that the co-employees of the deceased namely; Amol Shelar and Somnath Ghorpade, categorically stated that two persons had come to fetch the deceased at about 9.30 pm. on 19th June, 2019. Both the witnesses identified the applicant as one of those persons, who had come to fetch the deceased at his work place, on that night. The mere fact that in the memorandum of the test identification parade the name of a person, other than those who were shown to be the public witnesses to the said test identification parade, is mentioned, at this stage, cannot be a justifiable ground to jettison away the said material.

13. It is pertinent to note that the co-employees of the deceased have stated that on 19th June, 2019, the deceased had come to the workplace along with a bag. Upon being asked, the deceased had stated that he had brought the bag as he wished to go to his native place as there were frequent

quarrels with his wife for the reason that she had an extramarital relationship with the applicant. The said bag, which contained the personal belongings and the documents of the deceased, was recovered pursuant to a discovery made by the applicant on 24th June, 2019. The weapon i.e. a bamboo stick with which the deceased was allegedly assaulted was also recovered pursuant to the discovery made by the applicant on 22nd June, 2019.

14. Mr. Gaware Patil attempted to salvage the position by canvassing a submission that those recoveries were effected from places, which were open and accessible to all. I am afraid, at this stage, such a meticulous evaluation of the evidence and material is impermissible.

15. The upshot of the aforesaid consideration is that there is adequate material to make out a strong *prima facie* case against the applicant.

16. The release of the applicant on bail, in the context of the nature of the accusation and the vulnerable position of the witnesses, may prove counter productive. The apprehension on the part of the prosecution appears to be justifiable. I am, thus, not persuaded to exercise the discretion in favour of the applicant.

17. Hence, the following order:

: O R D E R :

- (i) The application stands rejected.
- (ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

[N. J. JAMADAR, J.]