

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.703 OF 2021**

Panchappa @ Yogesh Irappa Desai .. Applicant

Versus

The State of Maharashtra .. Respondent

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Ms.Shubhangi Parulekar for the Applicant.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 07th SEPTEMBER, 2022

P.C:-

1. The applicant seeks his release on bail on being charged for the offence punishable under Section 302 read with Section 34 of IPC.

2. The offence registered with Bhosari Police Station vide C.R.No.966 of 2019, accuse him of committing murder of his wife Sarika and in connection with the said C.R., he came to be arrested on 20/11/2019 and he seeks his release, on the ground that the material compiled in the charge-sheet fall short of proving the charge of murder and also on the ground that three years have passed since his arrest, but till date charge is not framed and the trial is likely to consume considerable time.

3. Heard learned counsel for the applicant and the learned A.P.P. for the State. With their able assistance, I have perused the charge-sheet placed on record.

On 20/11/2019, one Anita Birajdar, mother of Sarika lodged a complaint that her daughter was married to the present applicant prior to two years and since last one year, she was residing with her husband at Bhosari. It is alleged that after the marriage, there was some household dispute with her in-laws, but since last one year, she was residing separately with her husband and this act was not approved of, by her in-laws.

On 19/11/2019, the complainant received a phone call from the mobile of her daughter Sarika and the applicant, who was speaking on the other end, informed her that her daughter had become unconscious. Thereafter, she reached the hospital alongwith her relatives and found her daughter dead with a strangulation mark on her neck alongwith some abrasions. In the complaint, she alleged that the present applicant, at the say of his parents, is responsible for her death.

4. During the course of investigation, statements of some relatives of the deceased were recorded, who corroborated the version of the complainant that Sarika was found to be dead and she was having strangulation mark on her neck. Inquest panchnama was carried out, which refers to a blackish bluish ligature mark over the neck. The post-mortem was conducted and the probable cause of death was ascertained as, "Constriction around neck".

Statements of neighbours are also recorded and compiled in the charge-sheet, who came to know that Sarika was found in

an unconscious condition in her house.

Statement of Bramhanath Walke, the owner of the room in which the applicant was residing alongwith his wife, also came to be recorded. He stated that before two months, applicant and his wife had come to reside in his room and while they shifted their belongings, one Raju Dongardive was also present and he used to frequent their house. When the applicant was asked about it, he was introduced as a friend of his wife, who was working with her in Big Bazar. Even Sarika had disclosed to him that Raju is her friend.

The owner states that on 19/11/2019 at 6.00 p.m., while he was on work, he received a phone call from the applicant, who inquired with him as to whether there is no electricity in the building, as his wife's phone is switched off, which is rather unusual. He was, therefore, asked to inquire. The said witness called up his wife and asked her to visit the top floor of the building, where the applicant was residing with his wife, as Sarika was not answering the phone call of the applicant. In turn, he received a phone call from his wife informing that Sarika was lying on the floor, in an unconscious condition and she was not responding. In turn, the applicant was informed by Bramhnath.

Statement of Satyawalan Walke is also on similar line, who states that on noticing that Sarika was lying in an unconscious condition, he made a phone call on number 100 and informed the police.

5. The statement of wife of Bramhnath, Sheela is also recorded, who states that when she went to the room of Sarika

after she received a phone call from her husband at 6.15 p.m., she found Sarika lying on the floor in an unconscious condition. When she sprinkled water on her face, she did not get up. According to her, applicant reached the spot after 15 to 20 minutes, on being informed.

6. The CCTV footage collected from the building reveals that the applicant left his house on his cycle at 9.29 hrs. in the morning. Further, at 10.16 hrs., Raju Dongardive, wearing white shirt and black pant, is seen entering the building. On 11.19 hrs., he is seen exiting the building. The CCTV footage has been collected and a statement in support is also recorded and compiled in the charge-sheet.

7. As far as the case of the applicant is concerned, learned counsel would rely upon the statement of his employer, Hitesh Doshi, who has stated that at 4.00 o'clock, as per his direction, Yogesh (applicant) had left for Pantagon Company, as the material was to be unloaded there. He also states that Yogesh returned to the shop at 5.30 p.m., after obtaining the receipt of challan. At 5.45 p.m., he told his employer that he was going home. Another employee informed Hitesh Doshi at 6.30 p.m. that Yogesh's wife is dead.

Relying on the aforesaid statement, learned counsel for the applicant would submit that the applicant was very much present in the shop till the evening hours and, therefore, he did not return home, once he left at 9.30 hrs.

Corresponding the said statement is the statement of one Jayesh Doshi, the brother of the applicant's employer, who states

that Yogesh had accompanied the tempo driver for unloading of the material and at 5.19 hrs., he disclosed to him that the material is deloaded and the challan is signed.

8. As far as Raju is concerned, the charge-sheet has compiled the material reflecting that Raju had visited the house of the applicant and was present there, for over an hour, as his presence was noted in the CCTV camera, but surprisingly, the prosecution has not turned it's head to him. One Meena Gaikwad, with whom Raju was residing since last 8 days, has stated in her statement that Raju was on job in Pune for last two years. He was also working in Big Bazar for some period of time and 8 days back, he had come to stay with the Gaikwads. In her statement under Section 161, she disclosed that on 19/11/2019, he left the house at 8.30 a.m. and returned back at 12.15 in the afternoon. When she asked him to have food, he refused and he was found to be under stress. She left the house to attend the work, but when she returned home at 5.45 p.m., she was informed by her neighbour that Raju has left the house by carrying a big bag and left the keys with her. She noticed that Raju had taken all his belongings and left the house hurriedly. She tried to make a phone call to him, but he was not reachable.

Another witness by name Prashant Sarwade states that he was closely associated with Raju, who once upon a time, was working at Big Bazar. He states that Sarika was his close friend and she was also working in Big Bazar, but had left the job. He has stated that the applicant had also left the job on account of some payment issue.

9. In the light of the circumstances placed in the charge-sheet, where the Medical Officer has given an opinion that the deceased must have died between 14 to 20 hours, before commencing the autopsy and which would be the period after 11.00 a.m., it is not understood as to why the prosecution is suspecting only the applicant. The applicant is seen leaving the house at 9.30 a.m. and he returned only when he received the information. The present case, being based on circumstances, in order to justify the prosecution, it will have to establish a chain of circumstances, which would invariably pinpoint the guilt of the accused and indict him as the one, who is only responsible for causing death of Sarika.

In the present case, the charge-sheet compiles the material which reveal that Raju has also entered the house of the deceased after the applicant has left the house. The suspicious circumstance in which he has left the house, where he was staying, ought to have drawn attention of the investigating agency.

Be that so, since the case of the prosecution is based on circumstantial evidence and it will have to be proved at the time of trial, at present in the wake of the assumptive material and inferences drawn in the charge-sheet, the applicant deserves his release on bail, as there is no material to show that applicant visited his house, after he left for the office.

10. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced, by the above observations in any manner.

: ORDER :

- (a) Application is allowed.
- (b) Applicant - Panchappa @ Yogesh Irappa Desai shall be released on bail in connection with C.R.No.966 of 2019 registered with Bhosari Police Station, Pune on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance with the concerned police Station on first Monday of every trimester between 3.00 p.m. to 5.00 p.m., till framing of charge.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On his release on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(SMT. BHARATI DANGRE, J.)