

Vidya Amin

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

BAIL APPLICATION NO. 660 of 2022

Kailash Shaligram Kharat

.. Applicant

Vs.

State of Maharashtra

.. Respondent

Mr. Faisal F. Shaikh for the applicant.

Mr. S.H. Yadav, APP for the State.

API Mr. Rajiv Lole, Rabale Police Station present.

CORAM : BHARATI DANGRE, J.

DATE : SEPTEMBER 16, 2022.

P.C.:

1. The applicant is charge-sheeted in C.R. No. 110 of 2020, which invoke the offence punishable under section 302 of Indian Penal Code against three accused persons. The applicant is arraigned as accused no. 1 and it is the submission of the learned counsel that accused nos. 2 and 3 are already released on bail by this Court on the basis that there is no sufficient evidence against them of the offence of murder.

The applicant came to be arrested on 6th March, 2020 and the charge-sheet has been filed on completion of the investigation. His application for bail was rejected by the Sessions Court at Thane on 29th October, 2020 and hence he is before this Court.

2. The case of the prosecution is based on circumstantial evidence and the police machinery was patrolling when the first informant who is

employed as a Security Guard at Renuka Security Services, discovered a body at around 8 a.m. under the bridge at Ulawa Creek. The body was found to be of a man and he was identified as one Khadak Jay Singh, whose wife Mrs. Laxmi Khadak Singh had registered a missing complaint of her husband on 10th February, 2020 with Rabale Police Station. The prosecution alleged that the present applicant along with two co-accused had put him to death and the allegation is that the present applicant was maintaining illicit relationship with the wife of the deceased and therefore, he along with co-accused persons had assaulted the deceased by knife and had thrown the body under the creek.

3. The entire case is based on circumstantial evidence and except the motive, which is also denied by wife, the material in the charge-sheet fall short of the accusations under section 302 of IPC. The prosecution rely upon recovery of one knife and CDR report connecting the co-accused with the murder. Apart from this, the statement of wife who has attributed motive to the accused persons, is also one factor which implicate the present applicant.

4. While dealing with the Bail Application of co-accused Jay Shankar Chavan and Wali Ahmed Mashsakali Sayyed, this Court (Justice Prakash D. Naik) had an opportunity to scan the materials compiled in the

charge-sheet and the following conclusion was derived:

“5. Learned APP submitted that statement of the wife of deceased was recorded under Sections 161 & 164 of Cr.PC. She has stated that her husband was suspecting that Kailash Kharat was having relationship with her. She referred to incident of 9th February, 2020. The co-accused was last person seen in the company of the deceased. The case of the prosecution is that the co-accused Kailash and the applicant with the assistance of other accused had assaulted the deceased by knife. There is recovery of weapon from the applicant. C.D.R. report shows the involvement of the applicant and the co-accused. As reflected in the First Information Report and the documents on record, the case is based on circumstantial evidence. The statement of the wife of deceased attributes motive to the co-accused and she has stated that the deceased and the co-accused were together and thereafter he was missing. She has not admitted that there was any illicit relationship between her and the co-accused Kailash Kharat. There is recovery of weapon from the applicant which had occurred on 12th March, 2020. There are no blood stains on the weapon. The evidence collected against the applicant is not enough to continue the custody of the applicant. Hence, bail can be granted to the applicant. “

5. There is no reason why the aforesaid observation is not applicable to the case of the applicant when learned APP is unable to point out any other circumstance, which, independent of its applicability to the co-accused, would indict him in the offence of murder. Hence the following order:

ORDER

- i) Bail Application is allowed.
- ii) The applicant-Kailash Shaligram Kharat is released on bail in connection with Crime No. 110 of 2020 registered with Rabale Police Station on his furnishing P.R. Bond to the extent of Rs.25,000/- (Rupees Twenty five Thousand Only) with one or two solvent sureties in the like amount.

iii) The applicant shall mark his attendance before the concerned police station on every Monday of trimester between 10.00 a.m. to 12.00 noon till framing of charge and thereafter, shall abide by the directions issued by the trial Court.

iv) The applicant/accused 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 the evidence.

v) On being released on bail, the applicant shall give his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)