

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.690 OF 2020

Rakesh Mahesh Patel

Applicant

versus

The State of Maharashtra

Respondent

Mr.Gautam Deepak Padohilal, Advocate for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th September 2022

PC :

1. The applicant is arrested on 1st February 2018 in connection with C.R.No.I-50 of 2018 registered with Narpoli Police Station for the offences under Sections 302, 201 r/w 34 of Indian Penal Code and under Sections 4, 8 and 12 of POCSO Act. The FIR was registered on 1st February 2018. This is second application for bail before this Court. The previous application was rejected vide order dated 24th September 2018.

2. The prosecution case is that in September-2015 the complainant was married to accused no.1 Mamata Yadav. After the said wedlock they were blessed with a child named Aaryan. The complainant was not having residence in Bhiwandi, hence he started residing with the applicant. The complainant suspected that his wife is having affair with the applicant. The complainant took his wife to native place at Uttar Pradesh. In December-2017 the complainant's wife returned to Bhiwandi and started staying with applicant-accused. On 30th January 2018, at about 9.15 p.m, the complainant

was informed that his son has passed away. The complainant immediately rushed to the residence of applicant and accused no.1. He was informed that the applicant-accused and another person had taken the body of his child. The complainant went to Mankoli Police Station to lodge complaint. On 31st January 2018 Mohammed Munnemiya informed about the place where the body of complainant's son was buried. It was then noticed that the child had died on account of strangulation. Postmortem report was conducted after exhuming the body. The offence was registered against the applicant and the complainant's wife. During the course of investigation it was revealed that the accused had conspired to kill the child being obstacle in their relationship.

3. Learned advocate for applicant submitted that while rejecting the previous application for bail this Court had not considered statement of Pratik Shashikant Bohra recorded on 15th February 2018. The witness states that till 6 p.m the applicant was at his work place. Therefore there is no authentic evidence to establish that applicant was involved in killing the child. It is further submitted that applicant is in custody for a period of about four years and eight months. Further custody is not necessary. The case is based on circumstantial evidence. There are no criminal antecedents against applicant. Except framing charge, there is no progress in trial. Reliance is placed on the order of Supreme Court in the case of **Indrani Pritam Mukerjea Vs. CBI and another** (2022-ALL M.R. (Cri)-2282 {S.C}) and order passed by Apex Court in the case of **Chintan Vidyasagar Upadhyay Vs. The State of Maharashtra** decided by Supreme Court on 17th September 2021 in Special Leave Petition (Cri.)No.2543 of 2021. Relying upon said orders it is submitted that

the accused were granted bail on the ground that they were in custody for substantial period.

4. Learned APP submitted that previous application for bail was rejected by this Court by assigning reasons. There is no change in circumstances. The grounds urged by applicant cannot be considered for grant of bail. There is sufficient evidence against applicant showing his involvement. The concerned Public Prosecutor has forwarded written communication stating that summons is issued to the witnesses and case was listed on 5th July 2022, however, it was adjourned to 10th August 2022, and thereafter on 16th September 2022. On 5th July 2022 the accused and his advocate was not present.

5. Trial Court was requested to forward report about status of trial. Report dated 12th September 2022 is received. On perusal of the report it is evident that charge has been framed against accused on 16th January 2019 and since then the case is posted for hearing/recording of evidence.

6. It is pertinent to note that applicant is in custody for a period of about 4 years and 8 months. There is no progress in the trial. The report of Trial Court does not indicate that applicant has delayed the trial. The case is based on circumstantial evidence. The case of prosecution is that there is recovery of cloth used for strangulating the child from the co-accused. It is noted that previous application is rejected by this Court on 21st September 2018. Although four years have passed thereafter, there is no progress in trial. Considering the factual matrix of the matter, role assigned to applicant and the fact

the fact that he is in custody for about 4 years and 8 months, further custody is not required. Bail can be granted to the applicant.

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with CR No.I-50 of 2018 registered with Narpoli Police Station, Thane on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of six weeks;
- (iv) The applicant shall report concerned Police Station once a month on every first Saturday between 11 am and 1 pm till further orders;
- (v) The applicant shall not tamper with evidence.

(PRAKASH D. NAIK, J.)

MST