

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1013 OF 2021

AJAY ASHOK DHAINJE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Veerdhaval Kakade, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 13th DECEMBER 2021
PRONOUNCED ON : 20th JANUARY 2022

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.103 of 2018 registered with Police Station Wai, for offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code (IPC).

AVK

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2 The prosecution case in short is that on 15th April 2018, one Dilip Mansing Bhilare telephoned Wai Police Station and informed that dead body of a lady was seen lying at Malvathar Hill within jurisdiction of Abhaypuri Village. After reaching the spot it revealed that the deceased's neck was slit by some sharp weapon and after drawing necessary panchnama, the informant – a Police Nayak, registered First Information Report (FIR) against unknown persons.

3 During the course of investigation it revealed that deceased was Banu Gopal Kokare who was in relationship with accused Natha Dada Lavate and was constantly pestering him to marry her. However, since the said accused was already married, the deceased was creating a hindrance in his married life. The prosecution alleges that accused Natha Dada Lavate along with accused Ravindra Shendge and the applicant conspired together and asked the deceased to come to Mandhardev on 14th April 2018. It is further alleged that on instructions of accused Natha Dada Lavate, applicant and accused Ravindra Shendge went to a

secluded place on the hill of Gadhvewadi on the road going from Wai to Mandhardev. Accused Ravindra Shendge then handed over a steel knife to the applicant who after catching hold of the deceased slit her throat.

4 Mr.Veerdhaval Kakade, learned counsel for the applicant, submits that accused Ravindra Shendge is already released on bail by this Court (Coram : Anuja PrabhuDessai, J.) on 27th September 2018. The whole case of prosecution is based on circumstantial evidence. Even the weapon of offence allegedly used has been recovered along with blood stained clothes. Except that, there is nothing to connect the applicant with the alleged offence. In such circumstances, the applicant deserves to be enlarged on bail, argued learned counsel.

5 Mr.H.J.Dedhia, learned APP, on the other hand, invited my attention to the statement of Jeevan Baban Mandhare in whose presence the CCTV footage was seen. According to the learned APP, the applicant was also seen in the CCTV when he

along with other accused had visited Shivam lodge along with the deceased. Having regard to the nature of offence, the applicant does not deserve to be enlarged on bail, argued learned APP.

6 Perused the investigation papers. The whole case of prosecution is based on circumstantial evidence. The weapon of offence allegedly used in the commission of the crime has, admittedly, already been seized at the instance of applicant which is apparent from his disclosure statement recorded under Section 27 of the Indian Evidence Act.

7 As far as the CCTV footage is concerned, this Court while releasing the co-accused Ravindra Shendge had an occasion to discuss the same at paragraph 6. Admittedly, the applicant and other accused were seen in the company of the deceased in a hotel on 14th April 2018. The Court was of the view that the statement of the witness who identified the applicant and others after showing the CCTV footage would not

per se show involvement of the applicant in commission of the crime.

8 I have also pointed out that except recovery and that the applicant was seen in the company of the deceased along with other accused, no other cogent and convincing circumstance is forthcoming or established on record to show that immediately before the death, the deceased was in company of the accused and the applicant. In a case based on circumstantial evidence, prima facie, there must be a series of chain of circumstances which need to be prima facie established, in order to fasten the criminal liability. All this will have to be looked at the time of trial.

9 For now, in my view, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Ajay Ashok Dhainje shall be released on bail in Crime No.103 of 2018 registered with Police Station Wai, on

his executing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall report to the Investigating Officer or the Senior Police Inspector, Wai Police Station, on the first Monday of every month until further orders.
- (iv) The applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer and in the bail bond.
- (v) The applicant shall not change his residential address without prior intimation to the Investigating Officer.
- (vi) Bail before the trial Court.

(vii) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(viii) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(ix) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)