

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.847 OF 2020

Vinod @ Rohit M. Jaiswar
@ Gautam .. Applicant.
v/s.
The State of Maharashtra .. Respondent.

Mr. Satyavrat Joshi, for the Applicant.
Ms. M. R. Tidke, APP for the Respondent-State.

CORAM: VINAY JOSHI, J.
DATED : 20th APRIL, 2022.

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The applicant is seeking regular bail in Crime No. 565 of 2017 registered with Pimpri Police Station, Pune for the offence punishable under Section 302 read with Section 201 of Indian Penal Code and Section 37(1) read with Section 35 of the Bombay Police Act.

2 Crime was registered at the instance of report lodged by Police Officer as un-known female dead body was found. The informant reported that on the concerned date, they received information that a de-composed dead body was lying in a gunny bag. The police have sent dead body for autopsy. The clothes worn by the deceased lady along with ornaments were seized. It was revealed that there were several injuries on the person of deceased.

3 The applicant's learned Counsel would submit that there is no eye witness to the incident. The case is totally based on

circumstantial material collected by prosecution during course of investigation. The last seen theory can hardly apply since there was six days gap in between last seen of deceased in the company of the applicant and finding of dead body. Moreover, it is submitted that the seizure has no connection with the crime. Lastly, it is contended that co-accused namely – Rajan is released on bail by this Court vide order dated 28th August, 2019.

4 *Per contra*, the State resisted bail by pointing towards the seriousness of offence. It is submitted that the applicant was husband of the deceased lady. Due to matrimonial dispute, he has eliminated his wife and tried to destroy the dead body. It is submitted that already charge is framed and the Trial Court has fixed the case for recording evidence.

5 Perused entire police papers. No doubt, after finding of dead body, initial report was lodged against unknown person. Perusal of post mortem note discloses that there were several injuries on the person of deceased. Some of them are chopped injuries, inside wounds and thus, it is evident that deadly weapons were used for committing murder.

6 The applicant is husband of deceased. It has come in the police statement that, there was matrimonial discord in between them, for which, the wife had already filed a Civil Suit against the husband. It appears that, thereafter, differences have been patched and therefore they started to reside together. There is a statement of witness – Chabubai who has last seen both of them on 24th September, 2017 around 8.00 p.m. Pertinent to note

that she is a landlady and therefore, has a reason to specify the details. It is her statement that on 24th September, 2017, around 8.00 p.m., she saw applicant and his wife (deceased) both leaving the house by saying that they are visiting hospital. At that time, both of them had conversation with this witness. She further states that on the following day, she has seen accused alone in the tenanted room. She also enquired whereabouts of the deceased. However, accused replied that she had gone to her native place. *Prima facie*, her statement discloses that she has seen both of them on 24th September, 2017 in late hours and from the very next day, deceased went missing.

7 The learned counsel for the applicant pointed out that there is seven days gap in between the last seen and finding of dead body. Pertinent to note that dead body was found in a nala at distance place. P. M. note suggests that dead body was found in decomposed condition meaning thereby lady was eliminated much earlier than finding of dead body. In the back-ground of such peculiar facts, the worth of last seen evidence could be considered during course of trial.

8 There is evidence regarding disclosure statement and consequential recovery at the instance of applicant. The seizure panchanama discloses that one iron road was seized at the instance of applicant. Though, C A report is not available, however, for that reason only, the other material cannot be discarded.

9 The case is totally based on circumstantial evidence. Needless to state that prosecution has to establish the chain of all

circumstances complete in all respect. In such a type of case, if there is some short of tampering and the accuse is able to break either of link then certainly it would be at the determent of prosecution. Already Trial Court has framed charge long back on 26th April, 2019, however, evidence has not commenced. Perusal of Roznama indicates that on most of the dates of trial, the applicant (accused No.1) was not produced and on some dates, the co-accused Rajan remained absent. True, the accused is in a jail for more than four years and, therefore, Trial Court is under obligation to expedite the trial. In case, the co-accused is intentionally delaying the trial by remaining absent, the Trial Court is free to take necessary steps to secure his presence.

10 Having regard to all above facts, I do not find any propriety in releasing applicant on bail. The above observations are made on *prima facie* basis, which has no impact on the merits of the case. Hence, following order:-

ORDER

- (i) Application stands rejected.
- (ii) The Trial Court is requested to expedite the trial and conclude the same within one year from today.
- (iii) Application stands disposed in the above terms.

(VINAY JOSHI, J.)