

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1211 OF 2021**

Ravi s/o Harikesh Jaiswal .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Mateen Shaikh with Ms.Afrin Khan for the Applicant.

Mr.S.H.Yadav, A.P.P. for the State/Respondent.

PSI R.R.Dhumal, attached to BKC Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 20th AUGUST, 2022

P.C:-

1. The applicant is charge-sheeted for the offences punishable under Sections 302, 364, 120-B read with Section 34 of IPC. C.R.No.216 of 2019 came to be registered with BKC Police Station, when a dead body was found on 10/08/2019 by the Police Sub-Inspector, BKC Police Station when he was on duty. The body revealed some strangulation mark and there were abrasions on the face and several injuries were found on the body.

On the basis of the mobile phone, which he was possessing, his identity was established and body was forwarded for postmortem.

The cause of death was assessed as, "Asphyxia following ligature strangulation and smothering associated with blunt trauma to chest, abdomen and multiple injuries (unnatural)".

2. Two persons came to be arrested in the crime, first being the applicant on 13/08/2019, and another co-accused Rahul Goud, was arrested on 31/08/2019. As far as other three accused persons are concerned, they are shown as wanted accused. On completion of investigation, charge-sheet has been filed.

3. The prosecution relied upon the statement of one Raju Ramawadh Saroj, who has stated that on 10/08/2019, co-accused Rahul Goud informed him via phone that in the night, co-accused Shubham, Rajan, Pasi, Ravi and others had consumed liquor and they had killed Roshan (the deceased) and threw his body at BKC. He was warned that he should not disclose the incident to any other.

Another statement on which the reliance is placed, is of one Ritesh Yadav, who stated that on 10/08/2019, at about

7.45 p.m., the present applicant visited him and started demanding money and when he was questioned about the need of money, he revealed that quarrel had taken place and since, Shubham had assaulted one person, he was to be sent outside and he himself had to go to Kalyan to fill the gas. The witness states that he withdrew sum of Rs.1,000/- from the ATM.

On 11/08/2019, when he crossed path with the present applicant and asked him where is Shubham, he has disclosed that Shubham had entered into a quarrel with someone and he had done him to death, and, therefore, he had left.

Apparently, the said statement does not mention as to who is the person, who has been done to death.

4. Co-accused-Rahul Goud approached this Court and while opposing his bail application, statement of Raju Saroj was relied upon. The specific observation of the learned Single Judge (Coram : Smt.Anuja Prabhudessai, J.) in the order dated 27/04/2022 is reproduced as under :-

“4. In the course of investigation, the Applicant came to be arrested. The only material against the Applicant is the statement of the witness - Raju Ramawadh Saroj who claims that on 10/08/2019, during morning hours, he had received a phone call

from the Applicant. The Applicant told him that in the previous night, he and his friend had committed murder of the deceased – Roshan and had thrown his body near BKC. The Investigating Agency has not verified the call details and *prima facie*, there is no other material on record to indicate that the Applicant had called the said witness and had made any extra judicial confession. Under the circumstances, the Applicant is entitled for bail.”

5. Apart from the above, there is no other incriminating material, which would point out a link between the murder of Roshan and the present applicant. The statement of Ritesh also does not refer as to who has been done to death.

The sketchy material compiled in the charge-sheet, *prima facie*, fall short of proving charge under Sections 302, 120-B read with Section 34 of IPC and since, the applicant came to be arrested on 13/08/2019 and till date, when charge is not framed, he cannot be detained any further and deserves his liberty. Hence, the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant – Ravi s/o Harikesh Jaiswal shall be released on bail in connection with F.I.R.No.216 of 2019 registered with BKC Police Station on furnishing P.R.

Bond to the extent of Rs.30,000/- with one or more local sureties in the like amount.

The applicant shall be released on cash bail for a period of four weeks in lieu of sureties and during the said period, he shall arrange for the sureties.

(c) The applicant shall mark his attendance before the concerned police station on first Monday of every month till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(d) On his release on bail, the applicant shall furnish his residential address and the contact number to the Investigating Officer.

(e) 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.

(SMT. BHARATI DANGRE, J.)