

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

CRIMINAL BAIL APPLICATION NO.1317 OF 2021

Sushil Abhiman Bhalerao Applicant
Versus
The State of Maharashtra Respondent

Mr. Pravin V. Desai, Advocate for the Applicant.
Mr. P.H. Gaikwad, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 8th FEBRUARY, 2022
[Through Video Conferencing]

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.364/2019 dated 21.5.2019 registered at Kolsewadi police station, Thane under Section 302 of the Indian Penal Code. The applicant was arrested on 21.5.2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri Pravin Desai, learned counsel for the applicant and Shri P.H. Gaikwad, learned APP for the State.

3. The FIR is lodged by one Sudhir Salve, who is brother of the deceased Dheeraj. He has stated in his FIR that the deceased was having love affair with the present applicant, but, the applicant was suspicious of the deceased. It is specifically mentioned so in the FIR. On 20.5.2019, the informant was told that his brother Dheeraj was murdered. Dheeraj was residing at Katemanivali, Kalyan East, separate from the informant. Dheeraj was found in a pool of blood. There were many stab injuries on him. The FIR further mentions that Dheeraj's friend Archana told the informant that on 16.5.2019, Archana had called the deceased Dheeraj. At that time, Archana was told by Dheeraj that he was not feeling well, the applicant had come to reside with him and that he was beating him on taking suspicion. Therefore, suspicion was expressed against the applicant for commission of murder and thus the FIR was lodged. The investigation was carried out and the applicant was arrested.

4. Learned counsel for the applicant submitted that the prosecution case is based only on circumstantial evidence,

which is weak in nature. The circumstances by themselves do not form the complete chain and, therefore, the applicant deserves to be released on bail. He submitted that the witness who had claimed that she had seen the deceased and the applicant together had also mentioned that after that she had found the room locked but after two days the room was found open. This important circumstance has remained unexplained. He submitted that it was impossible for the applicant to have again visited the scene of crime and to open the lock of the room. He submitted that the SIM card found with the applicant was not that of the victim. It is significant that the said SIM card stood in a third person's name and, therefore, there is no material to show that the SIM card was connected with the deceased and hence finding it with the applicant is of no significance.

5. Learned APP opposed this application. He submitted that the statements of the witnesses, including the first informant, shows the motive. There used to be regular fights and the applicant used to assault the deceased.

Secondly, there is a witness who had last seen the deceased with the applicant. Thirdly, the mobile handset and the SIM card which was used by the victim were found with the applicant and this circumstance has remained unexplained. There is recovery of a knife at the instance of the applicant and there is seizure of blood stained clothes of the applicant.

6. I have considered these submissions. As far as the motive is concerned, there are sufficient witnesses who have stated that the deceased and the applicant were in a relationship. The applicant was suspicious of the deceased's character and there used to be fights and the applicant used to beat the deceased.

7. As far as recovery of knife is concerned, it was recovered at the instance of the applicant on 24.5.2019. The knife was concealed by the applicant near Vithalwadi railway station under a stone. The knife which was recovered had dried blood stains.

8. When the applicant was arrested, two mobile

handsets were seized from him. One of them was a white coloured VIVO company phone. The prosecution case is that the said handset was that of the victim. For that purpose, the investigating agency has relied on the C.D.R. In this connection, the statement of one Archana Kene is important. She has given the mobile phone number of the deceased as “9967870169”. She has stated that the deceased had called this witness on 16.5.2019. The CDR shows that it was used in the handset of a VIVO company having the same IMEI number. Said handset was found with the applicant. Thus, the investigating agency has unearthed the evidence to show that the victim was using that particular mobile handset and the SIM card. The same handset was found with the applicant after his arrest. This has remained an important piece of evidence.

9. Apart from that there is another circumstance that the witness Bhagyashri had seen the applicant in the company of the deceased on 16.5.2019 at about 7.30 p.m.. On the next day, she had seen that the room was locked. The body of the

victim was discovered on 20.5.2019. By that time it was highly decomposed. The post-mortem notes show there were many stab injuries. Since the body was decomposed, the investigating agency's case is that the deceased was assaulted somewhere around to 17.5.2019. This matches with the timing given by Bhagyashri. There is proximity of time and place. It was the same place where the dead body was discovered. Therefore it is also a strong circumstance against the present applicant.

10. Considering all these aspects, at this stage, there is strong case against the present applicant and, therefore, no case for bail is made out. The application is rejected. It is clarified that these observations are made only for deciding the present bail application. The trial court shall independently decide the trial at the appropriate stage without being influenced by the observations made in this order. The application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date: 2022.02.10
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