

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1795 OF 2021

Jangilal Nandlal Harijan	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Sanjay Chaturvedi a/w I.P. Mishra, for the Applicant.

Mrs.A.A. Takalkar, APP for the State.

PSI Varkade, Waliv Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 7th OCTOBER, 2022.

P.C.

1] The Applicant is charged for the offence punishable under Section 363, 364, 302, 301 read with 34 of the Indian Penal Code pursuant to the charge-sheet filed in CR No.1243/2019. He came to be arrested on 06.12.2019 and since then he is incarcerated.

2] I have heard the learned counsel for the Applicant, who would submit that the case of the prosecution is based on circumstantial evidence and in absence of chain of circumstances being completely and conclusively established, he deserve to be released on bail.

He further states that despite his arrest for last three years, no charge has been framed till date and the trial is likely to consume considerable time.

3] With the assistance of the learned counsel for the Applicant and the learned APP, I have perused the charge-sheet placed on record. The case of the prosecution which has been crystalized in the charge-sheet against two accused persons is to the effect that the complainant Tajeshwarkumar Hiralal Gautam and his wife Kanchandevi Gautam own a chawl in which the Applicant was staying. There was default in paying rent and time and again quarrel ensued between the complainant and his wife and the Applicant. It is also case of the prosecution that the Applicant was a die-hard drunker and at the time of one such quarrel, he was driven out of the house of the complainant. In order to take revenge of the said act, it is alleged that he kidnapped their four year old son and after strangulating him, destroyed the evidence.

4] The postmortem report refer to decomposed state of body with presence of contusions abrasions in Column No.17. Column No.19 record under-scalp contusion of size 2 cm. x 2 cm. Over right temporal region and under-scalp contusion on occipital region. Though the cause of death has been reserved, in the opinion column it is expressed that there is evidence of under-scalp contusion . The body of the child was traced after two days, from the spot which was revealed by the Applicant.

5] The charge-sheet has compiled statement of one Laxmi Gupta who runs a grocery shop, and who is residing in the neighbourhood. She, in her statement recorded on 20.12.2019 state that on 03.12.2019 at around 3.00 p.m. the Applicant accompanied by the co-accused alongwith a young boy had visited her shop to buy some food items and they were seen proceeding towards Vasai Fata.

This is the only circumstance which the prosecution rely upon, but considering the fact that the statement was recorded after a lapse of time i.e. on 20.12.2019 i.e. almost 17 days after the incident and particularly when the said witness is residing in the neighbourhood and aware of child being kidnapped by someone. That statement by itself will not indict the Applicant.

It will be ultimately for the prosecution to establish the truthfulness and veracity of the statement. However, in absence of any other material compiled in the charge-sheet against the Applicant, he deserve his release on bail. This is, however, subject to condition that he shall not reside in the area where the complainant and his family is residing and shall move himself from the said area.

6] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence, the following order :

ORDER

- (a) Application is allowed.
- (b) Applicant – Jangilal Nandlal Harijan shall be released on bail in connection with C.R.No.1243 of 2019 registered with Waliv Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the Investigating Officer on first Monday of every trimester between 10.00 a.m. to 12.00 noon.

(d) The Applicant shall not residing in the area where the complainant alongwith his family is residing.

(e) The Applicant shall provide his address where he would be residing after being released on bail and to provide his contact details and keep the officer intimated about any change therein.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(g) The Applicant shall regularly attend trial, on every date, unless he is exempted.

[BHARATI DANGRE, J]