

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2263 OF 2021

Kamalnarayan Laxmi Ray .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Hare Krishna Mishra for the Applicant.

Ms.A.A.Takalkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 02nd AUGUST, 2022

P.C:-

1. The applicant is accused of murdering his daughter-in-law and alongwith the co-accused, he face charge under Sections 302, 201, 120 read with Section 34 of I.P.C. In the subject C.R., applicant came to be arrested on 30/12/2019 and on completion of investigation, the charge-sheet has been filed and the case is committed to the Sessions Court, Dindoshi, being Sessions Case No.260 of 2021. The applicant is facing trial in the above sessions case.

2. On 11/12/2020, one Sudhir Thakur approached to Samatanagar Police Station (Kandivali) and lodged a missing complaint about his married daughter Nandini, being missing since 08/12/2020.

On 24/12/2020, complainant PSI Vaibhav Nanavare was on day duty at Malvani Police Station and he received an information from a Naval official that a big gunnysack was found on the seashore, at the back side of INS Hamala situated at Mud-Malad (W), Mumbai. A human leg was projecting outside the gunnysack and it was emanating foul smell.

When the complainant alongwith his team, reached the spot and tore the gunnysack, a body of a lady wrapped in red bed-sheet was found. On being examined by the doctor, it was opined that the lady was in the age group of 35-37 and the body was found in a highly decomposed state.

3. A.D.R.No.180 of 2020 came to be registered against the unknown person, which invoked Sections 302 and 201 of I.P.C.

The applicant came to be arraigned as an accused, he was arrested and charge-sheeted.

4. Learned counsel for the applicant would submit that the applicant has been falsely implicated in the subject C.R. and he

is father-in-law of the deceased and the accusations faced by the applicant do not indicate his involvement, as the entire case of prosecution is based on circumstantial evidence. The settled parameters as regards the evidence in the nature of circumstances are not available in the present case as none of the witnesses, whose statements have been compiled in the charge-sheet, have linked the present applicant to the death of his daughter-in-law. Moreover, learned counsel would submit that the prosecution does not attribute any motive to him in the entire charge-sheet and the police have come up with bogus story of contract killing and has shown false recovery of amount from the co-accused, which in no case, matches with the evidence in the charge-sheet.

In any case, it is submitted that the applicant is aged 60 and on completion of investigation, charge-sheet has been filed. Since, the trial is likely to consume considerable time, the applicant deserves his release on bail.

5. With the assistance of the learned counsel for the applicant and the learned A.P.P., I have perused the material compiled in the charge-sheet.

The cause of death has been received by the Investigating Officer, subsequent to the filing of charge-sheet and its record as under :-

“(1) Evidence of contusion over left maxillary prominence;

(2) No evidence of Ante-mortem drowning

However, definite opinion as to cause of death cannot be ascertained due to advanced decomposition.”

6. The present applicant is arraigned as accused No.1 alongwith two other accused persons and the charge-sheet allege that the accused persons have done deceased Nandini Kumari, aged 21 years, to death as the applicant, who is her father-in-law, was suspecting her character and after eliminating her, her body alongwith the bed-sheet and pillow, was packed in a white gunnysack, which was thrown into the sea in order to destroy the evidence. In support of the said charge, statement of Vaibhav Nanavare, the complainant is recorded and compiled in the charge-sheet. A panchnama is prepared on recovery of the body from the gunnysack along with the clothes and the accessories, which were found on the body of the deceased. The body was forwarded for postmortem, which has expressed the probable cause of death.

7. The statement of Sudhir Thakur, the father of the deceased who has lodged the missing report, is also compiled in the charge-sheet and he has stated that his daughter had eloped with the son of the applicant, Pankaj and they had

solemnized a marriage when she was 17 years and 11 months. He has stated that after her marriage, he was not in contact with his daughter, but he was informed that in June 2018, she started residing with her husband in a rented room at Nalasopara. From June 2020, his daughter was residing in the room owned by her father-in-law alongwith her husband. On 14/09/2020, the complainant left for Biar and he continued to be there till 04/12/2020. On 18/12/2020, her husband left for Bihar and according to the complainant, his daughter was all alone with the father-in-law. On 08/12/2020, his wife had spoken to his daughter. He received a phone call from his son-in-law that the phone of his daughter was not reachable and, therefore, on 09/12/2020, he went on the address supplied to him, where his daughter was residing, but the house was found to be locked. He made inquiries with the persons in the neighbourhood, but nobody gave him any information. He, therefore, lodged the complaint stating that his daughter was missing from 08/12/2020.

8. The statements of the persons residing in the neighbourhood are also compiled in the charge-sheet, but there is nothing incriminating against the applicant in the said statements and all the neighbours in sync, have stated that

she was never found under any mental pressure nor she had any quarrel with anyone.

The statement of Pankaj Ray, the husband of the deceased, is also recorded, who corroborate the father-in-law who has stated that he has visited the house of the deceased on 09/12/2020. The husband reached Mumbai on 24/12/2020, when her body was found.

9. The material compiled in the charge-sheet in form of several statements of the witnesses do not assign any role to the present applicant, though the charge-sheet allege that he was suspecting the character of his daughter-in-law and with the help of the co-accused, he had done her to death and in order to destroy the evidence, had thrown her body in the sea. Not a single statement in the charge-sheet establish the said assertion. On the other hand, even the witnesses residing in the neighbourhood, do not refer to any quibble between her and her father-in-law.

Merely because one circumstance in the charge-sheet that when his daughter went missing, the applicant left for his native place by taking a flight, which circumstance the learned A.P.P. is harping upon, shall not relieve the prosecution of it's burden to prove it's case beyond reasonable doubt. One

circumstance in form of the conduct of the applicant post his daughter-in-law went missing, by itself cannot implicate him for the offence of murder. The prosecution has failed to attribute any motive to the applicant for eliminating the deceased by any material compiled in the charge-sheet.

10. The applicant will take the consequences of the accusations faced by him at the time of trial and his guilt will be established. However, in the wake of the material compiled in the charge-sheet and the prosecution case is based on circumstantial evidence, where it is necessary to establish chain of circumstances in such a way that each circumstance, if clubbed in the ring of circumstances, refer to the guilt of the accused and establish that in all probability, the act must have been done by him. There is no eye witness to the occurrence of the incident and the prosecution will have to prove beyond reasonable doubt the complete chain of events and circumstances, which will definitely point out the involvement and guilt of the applicant. A chain of events should exclude every possibility, hypothesis of the applicant's innocence.

Since the material compiled in the charge-sheet, *prima facie*, fall short of the above, the applicant deserves his release on bail.

11. It is made clear that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and shall not be construed as finding on the merits of the trial.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Kamalnarayan Laxmi Ray shall be released on bail in connection with C.R.No.1597 of 2020, registered with Malvani 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 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. The Applicant should not tamper with evidence.
- (d) The Applicant shall mark his attendance in the concerned police station on first Monday of every trimester between 2.00 p.m. to 4.00 p.m. till framing of charge.

(SMT. BHARATI DANGRE, J.)