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

BAIL APPLICATION NO. 2716 OF 2021

Mr. Haidar Noor Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

.....
Dr.Uday P. Warunjikar for the Applicant.
Mrs.Anamika Malhotra, APP for the Respondent -State.

.....
CORAM : V.G.BISHT, J.
RESERVED ON : 10TH DECEMBER, 2021
PRONOUNCED ON : 20TH JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 69 of 2016 registered with Vishrantwadi Police Station, District- Pune for the offence punishable under Sections 363, 364, 302, 201, 365, 120B read with 34 of the Indian Penal Code (the IPC).

2. The informant is elder brother of Prashant (since deceased). The applicant is his neighbour. According to

prosecution, a month prior to the incident, a quarrel had taken place between the applicant and deceased on the ground of suspected illicit relations between the deceased and the wife of applicant.

3. On 1st April, 2016, deceased had left the house but did not return. The informant came to know from the employee of his friend that he had seen the deceased at about 12.00 noon and that the deceased was forcibly taken in a car by 3 to 4 persons. The informant accordingly lodged the report against the applicant and other accused. On the basis of which First Information Report came to be registered.

4. Dr. Warunjikar, learned Counsel for the applicant, submits that the case of prosecution is based on circumstantial evidence. There is alleged recovery of dead body pursuant to the disclosure statement given by applicant. Except that, there are no circumstances showing the involvement of applicant in the alleged offence. Till date, no charge has been framed. Investigation is over. Similarly, there are no

criminal antecedents and in such circumstances, no purpose would be served by keeping the applicant behind the bars.

5. Mrs.Malhotra, learned APP, on the other hand, invited my attention to the statements of various prosecution witnesses and would submit that the applicant was last seen in the company of deceased. Similarly, there was recovery of dead body at his instance. The circumstances on record clearly indicate the involvement of applicant in the alleged offence. Having regard to the nature of offence, applicant does not deserve to be enlarged on bail.

6. Perused investigation papers including the statements of witnesses relied on by learned APP.

7. First of all, I may note from the record that on 2nd April, 2016, a missing report was lodged by informant in respect of deceased. Interestingly, on the same day, the FIR in question also came to be lodged by informant. In the missing report, there were no allegations as are made in the FIR.

8. Coming to the last seen theory, there are statements of various witnesses.

9. First statement is that of Ankush Bajrang Mhaske, who states that on 1st April, 2016, he had seen deceased talking with applicant and Pappu alias Mohammed Qureshi. This statement came to be recorded on 2nd April, 2016. However, it appears that the statement of this witness again came to be recorded on 4th April, 2016 wherein he improved his earlier statement and stated that since he was knowing about quarrel having been taken place between the applicant and deceased on account of illicit relation between deceased and wife of applicant, he immediately on suspicion informed his owner and also the maternal uncle of informant about having seen deceased in the company of applicant and Pappu alias Mohammed Qureshi. Thus, there appears to be inconsistency between these two statements.

10. The next statement is that of Akshay Rajubhau Rampure, who at the relevant time was working with a shop

name and styled “Om Sai Seat Cover”. According to him, on 1st April, 2016 at about 12.00 noon, he had seen 2 to 3 persons forcibly taking a person in a car. Probably it appears that he was a same person, who had informed informant about the incident and that is after filing of missing report, the informant lodged the FIR on 2nd April, 2016.

11. What surprises me is that this witness was not knowing those 2 to 3 unknown persons. Although, he latter came to know the names of those 2 to 3 persons from the police but admittedly no test identification parade was carried out by the police so as to substantiate that those 2 to 3 persons were same persons, who had forcibly taken deceased in their car. Therefore, *prima facie* much cannot be read from the statement of this witness.

12. Prosecution witness Suraj Manohar Machrekar states that he was told about the incident by Ankush Mhaske. Thus, this witness has no personal knowledge about the incident.

13. Similar is the statement of Kajol Prashant Gumanekar i.e. wife of deceased to whom the boys from locality had informed that they (boys) had seen deceased in the company of applicant.

14. Thus, only evidence appearing on record is alleged recovery of dead body at the instance of applicant. The said disclosure statement of applicant is very much on record. Pursuant to which, the dead body and motor cycle came to be seized. Except this circumstance, there is nothing on record. Since the whole case is based on circumstantial evidence, it is settled law that the complete chain of circumstance has to be established by prosecution. It may be that, that can be done by prosecution at the time of trial but for now except disclosure statement, no other positive circumstance is forthcoming so as to infer *prima facie* involvement of applicant in the offence.

15. Investigation is completed and charge-sheet has been filed. There are no criminal antecedents. The trial may take

its own time. Having regard to the material on record, in my considered opinion, the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Haidar Noor Shaikh shall be released on bail in Crime No. 69 of 2016 registered with Vishrantwadi Police Station, District- Pune on his executing P.R. Bond in the sum of Rs. 25,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall attend the concerned police station twice in a month i.e. on First and Third Monday of every month in between 11.00 am to 2.00 pm till framing of the charges.

(iii) The applicant shall attend the trial Court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance

with law, uninfluenced by the observations made in this order.

(vi) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)