

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3133 OF 2021

Alibhai @ Samsheer Alibhai
@ Samsheer Shambhuddin Saha ...Applicant
Vs.
The State of Maharashtra ... Respondent

Mr.Satyavrat Joshi for the Applicant.
Ms.M.R. Tidke, APP for the Respondent-State.

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CORAM : C.V. BHADANG, J.

DATE : 4 APRIL 2022

P.C.

. By this Application, the Applicant is seeking bail in Crime No.29 of 20217, registered with Kokrud Police Station, under Section 302 of the Indian Penal Code.

2. The aforesaid Crime is registered on the basis of the complaint lodged by Sagar Mahadev Waghmode, who is brother of the deceased Nitin Mahadev Waghmode. According to the prosecution the Applicant was having illicit relations with the mother of the deceased which was not approved by the deceased and his brother. On account of the objection taken by the deceased and his brother, their mother stopped responding to the calls of the Applicant. Annoyed by this, it is alleged that in the

night on 17 August 2017, the Applicant had intentionally caused the death of the deceased Nitin Mahadev Waghmode by throttling him by a nylon rope.

3. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor. Perused record.

4. It is necessary to note that, the case is based on circumstantial evidence as there is no eye witness account available on record. The prosecution is relying on the statement of Mohan Sawant who is landlord of the deceased. He states that on 17 August 2017 at about 10.30 p.m. he had come out of the house for curing the color of the house. At that time he had noticed one bald person coming out of the house of the deceased. After seeing the witness, the said unidentified person again went in the house of the deceased and closed the door.

5. The witness was not alarmed, believing that the unidentified person might be guest of Nitin Waghmode. The following morning the deceased was found dead. During the course of the investigation the CCTV footage of the grocery shop was seized which was according to the prosecution, shows that the deceased is accompanying in the company of the Applicant for purchasing certain grocery articles.

6. The learned counsel for the Applicant pointed out that according to the prosecution the CCTV footage was obtained on a pen drive. However, there is no certificate under Section 65B of the Information Technology Act. It is submitted that the witness Mohan Sawant was shown the CCTV footage, on the basis of which he had identified the present Applicant as the person who had come out of the room of the deceased in the night on 17 August 2017.

7. Indisputably there is no Test Identification Parade held in this case. There is one more circumstance about recovery of a nylon rope and blood stained clothes of the Applicant, out of which, it can be seen that the CA report in respect of the blood group of the deceased is inconclusive, as a result of which the same cannot be matched, the blood stains, if any, on the clothes of the Applicant.

8. The investigation is complete and the charge-sheet is filed. The Applicant was arrested on 23 September 2017 and he is in custody since then.

9. In the result the following order is passed.

ORDER

(i) The applicant-Alibhai @ Samsher Alibhai @ Samsher Shambhuddin Saha be released on bail, on

executing a P.R. Bond in the sum of Rs.25,000/-with one or two solvent sureties, in the like amount.

(ii) The Applicant shall produce his local address of Islampur, District-Sangli and his native place address Bihar in along with proof to the satisfaction of the learned Sessions Judge.

(iii) The applicant shall undertake to remain present before the learned Session Judge during the trial, unless exempted.

(iv) The applicant shall not tamper with the prosecution evidence/witnesses.

(v) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(vi) The bail bonds to be furnished before the learned Sessions Judge.

(vii) The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.