

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3310 OF 2021**

Bharat Dhavala Jadhav ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Raj Jayasing Khude, for Applicant.
Ms. P.N.Dabholkar, APP, for State.

**CORAM: N.J.JAMADAR, J.
DATE : 15th JUNE, 2022**

P.C.

1. This Application is preferred to enlarge the Applicant-accused on bail.
2. The Applicant is arraigned for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, for having committed murder of his wife and caused disappearance of evidence with a view to screen himself from the legal punishment.
3. The marriage of the Applicant was solemnized with Pramila (deceased) two years prior to the occurrence. A month prior to the occurrence, the Applicant and the deceased had started to reside in Flat No.1002, C Wing, Mhada Building No.10, Pathardi Shivar, Nashik, the premises of Mr. Sachin Devram Zole, a nephew of Mr. Tanaji Kachare, the first informant. On 24th October, 2020 at about 3.15 p.m., the first informant's sister called and informed the first informant that the Applicant had called and apprised her that the deceased was done to death while the Applicant had gone for

work. After visiting the house of the deceased and noticing the situation thereat, including the condition of the body of the deceased, the first informant entertained suspicion about the veracity of the claim of the Applicant. Hence, the first informant lodged a report against the Applicant, alleging that for some reason, it was the Applicant who had killed the deceased.

4. During the course of investigation, the Investigating Officer interrogated the witnesses and recorded their statements. The Investigating Officer took the assistance of the dog squad and the identity of the Applicant was revealed as the killer of the deceased during the course of dog tracking. Post completion of investigation, charge-sheet came to be lodged.

5. I have heard the learned Advocate for the Applicant and the learned APP for the State.

6. The learned Advocate for the Applicant submitted that there is no material to establish the nexus between the offence and the Applicant. None of the prosecution witnesses has deposed about the martial discord. Nor any incident prior to the occurrence, which could give rise to a credible suspicion, is stated by any of the prosecution witnesses. The instant case, according to the learned Advocate for the Applicant, is one of no evidence.

7. Per contra, the learned APP would urge that the first informant had highlighted the circumstances which roused the suspicion about the version narrated by the

Applicant and there are statements of the witnesses which indicate that, on the day of the occurrence, no visitor visited the premises, except the owner of the said building. Laying emphasis on the dog tracking report, in the backdrop of the fact that it was the Applicant alone who was residing with the deceased, it was submitted that it cannot be said that there is no material to prima facie establish the nexus of the Applicant. The fact that during the course of the Applicant's medical examination on 25th October, 2020, an abrasion was noticed on the left arm, above elbow joint anterior side, was also pressed into service, to incriminate the Applicant.

8. I have carefully perused the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it. Few facts appear to be rather uncontroverted. The Applicant and the deceased had shifted to Flat No.1002, C Wing, Mhada Building No.10, Pathardi Shivar, Nashik, a month prior to the occurrence. Apart from the deceased, the Applicant was the only inhabitant of the house where the body of the deceased was found. Second, there is not much controversy over the fact that the deceased met death on account of combined effect of asphyxia due to smothering and craniocerebral damage due to blunt trauma to head which was sufficient to cause death in ordinary course of nature. The homicidal nature of the death is, therefore, not in contest.

9. Indisputably, the case rests on circumstantial evidence. I have perused the statements of the witnesses, including the mother and sister of the deceased. They

have not stated that there was any martial discord. Even in the FIR, the first informant had not adverted to any martial discord or other dispute between the Applicant and the deceased. The witnesses have, however, consistently stated that the deceased was suffering from certain ailments. Secondly, the statements of the watchmen at the building are not of prima facie incriminating tendency.

10. The circumstance which was strongly pressed into service on behalf of the prosecution, was that of dog tracking. It is well recognized that the evidence of dog tracking is required to be appreciated with care and caution. It would be hazardous to draw an inference of guilt on the basis of dog tracking report. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of Gade Lakshmi Mangaraju V/s. State of A.P.¹. The relevant observations of the Supreme Court read thus :

“13. The weakness of the evidence based on tracker dogs has been dealt with in an article “Police and Security Dogs.” The possibility of an error on the part of the dog or its master is the first among them. The possibility of misunderstanding between the dog and its master is close to its heels. The possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Police dogs engage in these actions by virtue of instincts and also by the training imparted to them.

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¹ (2001) 6 SCC 205

15. In Abdul Rajak Murtaja Dafedar V/s. State of Maharashtra² a three judge Bench of this Court declined to express any concluded opinion or to lay down any general rule with regard to tracker dog's evidence or its admissibility against the accused, as it was not necessary to do so on the fact situation. However, Their Lordships made the following observations on the usefulness or otherwise of such evidence :(SCC p. 240, para 12)

"It was argued that the tracker dog's evidence could be likened to the type of evidence accepted from scientific experts describing chemical reactions, blood tests and the actions of bacilli. The comparison does not, however, appear to be sound because the behaviour of chemicals, blood corpuscles and bacilli contains no element of conscious volition or deliberate choice. But dogs are intelligent animals with many thought process similar to the thought processes of human beings and wherever you have thought processes there is always the risk of error, deception and even self-deception. For these reasons we are of the opinion that in the present state of scientific knowledge evidence of dog tracking, even if admissible, is not ordinarily of much weight."

16. In Surinder Pal Jain V/s. Delhi Admn³ a two – judge a two Judge Bench expressed the opinion that "the pointing out by the dogs could as well lead to a misguided suspicion that the appellant had committed the crime, so save their Lordships sidelined that item of evidence from consideration."

17. We are of the view that criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although we cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals."

11. It is true that the Applicant and the deceased were the only inhabitants of the house where the deceased was allegedly found murdered. Yet in the absence of any

² (1969) 2 SCC 234

³ 1993 Supp (3) SCC 681

other material, the said circumstance, on its own, may not be a justifiable ground not to exercise the discretion, if a prima facie case is otherwise made out. The investigation is complete for all intent and purpose. The Applicant seems to have roots in society. Possibility of fleeing away from justice and tampering with evidence seems to be remote. Hence, I am inclined to exercise the discretion in favour of the Applicant. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Bharat Dhavala Jadhav, be released on bail on furnishing a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Nashik.
- (iii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the prosecution witnesses.
- (vi) The Applicant shall furnish his residential address as well as his mobile number within four days from his release on bail to the jurisdictional police station.
- (v) The Applicant shall regularly attend the proceedings before the Court of Session, Nashik.
- (vi) It is clarified that the observations made in this order are confined to the consideration for entitlement to bail and the trial court shall not be influenced by any of the observations made hereinabove.

(N.J.JAMADAR,J.)