

Vidya Amin

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

CRIMINAL BAIL APPLICATION NO. 3527 OF 2021

Brijeshkumar Rajkishore Singh

.. Applicant

Vs.

The State of Maharashtra

... Respondent

Mr. Rajendra Rathod with Mr. Ali Bubere and Mr. Umar Dalvi for Applicant.

Smt. Veena Shinde, APP for State.

Mr. Vinod Vasave, API, Worli Police Station, present.

CORAM : BHARATI DANGRE, J.

DATE : SEPTEMBER 16, 2022.

P.C.:

1. The case of the prosecution is, four security guards Manojkumar Singh, applicant BrijeshKumar Singh, deceased-Dayashankar Jaiswar and Shivkaran Sharma were employed with Unique Service Security and were posted at I Ven Realty, Worli, Mumbai. Four persons were well-known to each other and spread over for a period of 10 days, their duties were divided by day shift and night shift. On 29 January, 2021, Shivkaran Sharma and Manojkumar Singh were on day duty whereas Brijeshkumar Singh and Dayashankar Jaiswar were on night duty. At around 10 p.m., they had dinner together and went to sleep in different containers. On the early hours of 30 January, 2021, it is alleged that the applicant informed Shivkaran Sharma that three persons have assaulted the deceased and they fled away. When Manojkumar Singh and Shivkaran Sharma accompanied Brijeshkumar to the spot, they found

that Dayashankar Jaiswar has sustained injuries, so he was taken to the hospital where he was declared dead. Manojkumar, one of the security guard, informed Ramashankar Jaiswar, brother of deceased, about the incident, who lodged the complaint against three unknown persons.

2. The prosecution arrested the present applicant on the basis of motive that since one of the security guard was to be shifted from one site to another site and for the last one month, Brijeshkumar was quarreling with them. He had also quarrelled with the deceased several times.

3. The cause of death of Dayashankar Jaiswar in the Postmortem report has been ascertained as “Strangulation with multiple injuries in an alleged case of assault”.

4. The case of the prosecution is based on circumstantial evidence when amongst the three persons present, one is arraigned as an accused and the other is dead. The prosecution also relied on one circumstance, i.e., recovery of an hammer from the spot under recovery panchanama drawn under section 27 but it can be seen that it is recovered from the open space.

With this scanty material in the charge-sheet, that the prosecution,

prima facie failed to establish that the case is based on circumstantial evidence which necessarily imply that the circumstances should be so closely related so as to attract punishment and find the accused responsible for the death of the deceased. Since the burden lies on the prosecution to prove the case beyond reasonable doubt and the case cannot be based on the theory of preponderance of probability, it is ultimately open to the prosecution to prove the case when the applicant is tried for the offence under section 302 of IPC. However, at present in the light of scanty material contained in the charge-sheet, the applicant can no longer be incarcerated and deserves to be released on bail. Hence, the following order:

ORDER

- i) Bail Application is allowed.
- ii) The applicant-Brijeshkumar Rajkishore Singh is released on bail in connection with Crime No. 22 of 2021 registered with Worli Police Station on his furnishing P.R. Bond to the extent of Rs.25,000/- (Rupees Twenty five Thousand Only) with one or two solvent sureties in the like amount.
- iii) The applicant shall mark his attendance before the concerned police station on first Monday of every month between 5.00 p.m. to 6.00 p.m.
- iv) The applicant/accused shall not directly or indirectly

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

v) On being released on bail, the applicant shall give his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

[SMT. BHARATI DANGRE, J.]