

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3177 OF 2019**

Vishal Vishnu Kadam .. Applicant
Versus
The State of Maharashtra .. Respondent

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V.S. Paradkar for the Applicant.
A.A. Takalkar, A.P.P. for the State/Respondent.
A.A. Shaha , API, Shivaji Nagar Police Station

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**CORAM: BHARATI DANGRE, J.
DATED : 19th JULY, 2022**

P.C:-

1. The applicant is charge-sheeted in CR No.311/2017 registered with Shivaji Nagar P.stn, on 20/11/2017. He is charged for the offence of murder along with section 201 of IPC.

The case of the prosecution is, the applicant is a Rikshaw driver and he operate his Rikshaw in Ambarnath (East). The prosecution allege that the applicant was last seen in the company of the deceased, i.e. on 16/11/2017, by the witness and thereafter on 19/11/2017, the body of the deceased Kavita Patole was found in bushes, in open ground. She had sustained injuries in her head and it appeared that the assault was mounted by a stone which battered her face. On discovery of the body, an AD came to be registered and the investigating machinery was set into motion. The body was referred for autopsy and was found to

be in advance stage of decomposition. There is an evidence of head injury, and the cause of death has been assessed as “head injury with multiple facial bone fracture”.

2 During course of investigation, statement of several persons have been recorded. This include the statement of one Deepesh Rasal, who was acquainted to the deceased Kavita, who was engaged in catering work, and they were on friendly terms and use to chat with each other on phone. On 16/11/2017, he received a call from the deceased and she informed him that she was at home. At 6:15 p.m when Deepesh again called her on phone, she informed him that she was on her way to visit her aunt. Deepesh met her between 6:30 to 7:00 p.m near Gaodevi Mandir, when she was sitting in an Auto Rikshaw with No. MH 05 C.P. 886, and she introduced the Rikshaw driver as Vishal Vishnu Kadam as her friend, and told him that she wanted to borrow money from him. The said witness made a phone call to the deceased at 9:15 p.m but she did not receive the call.

Another statement of Yogita, who was residing in the neighborhood, but for some reason was not on talking terms with her, is to the effect that she saw the deceased going some where in a Rikshaw at around 8:00 p.m. Since her house was locked for 2 days, she made inquiry with her children and was informed that she was not seen for last 3 to 4 days.

3 The mobile phone of the deceased came to be recovered from one Ashish Singh at the instance of the applicant, and statement of Ashish compiled in the charge-sheet reveal that the applicant who was referred to as ‘Autowala Vishal’ had sold the

mobile phone for Rs. 300/- to him on 20/11/2017.

4 Statements of her 2 minor children, of the deceased recorded by the police are also compiled in the charge-sheet and the learned counsel for the applicant would vehemently submit that their statement is, that their mother returned back home, and therefore the chain of events which the prosecution is relying upon to establish the circumstantial evidence stand broken.

When the said statement is carefully read, the two sons of the deceased, aged 10 and 13, are not referring to the particular incident dated 16/11/2017, when their mother went out of the house, and even if assuming that they are referring to the said incident, they are referring to the evening hours. It is also stated by them to the police that their mother did not return for 3 to 4 days and all the neighbors searched her and during the search a body of a woman was shown to them and they recognized it to be of their mother.

The two children have categorically stated that the person with whom their mother went out by name Vishal, is known to them and he used to visit their house at times.

5 Another circumstance, is the statement of one Baban Gavde, a close acquaintance of the applicant, who state that on 16/11/2017, the applicant came to his house at 22:00 hours informing that he had differences with his uncle and he sought permission from him to stay in his house for 2 days, which he granted. He changed his underclothes and left the next day to return back in the evening.

6 The applicant has been identified in Test Identification

Parade by Rupa, Yogita and Deepesh, whose statements are compiled in the charge-sheet, that they have lastly seen the deceased alive in the company of the applicant when she was present in his Auto Rikshaw.

7 Ultimately, the burden will have to be discharged by the applicant during the course of trial to establish that, at what point of time he parted company with the deceased.

The prosecution case is based on circumstantial evidence, prima facie, pointing out the guilt towards the applicant and the chain of circumstances would ultimately be established by the prosecution at trial.

In the wake of the clinching material, the applicant do not deserve his release on bail. The Application is rejected.

The observation made above are prima facie in nature and limited for the purpose of the decision of the application and the trial court shall not be influenced by the above observation.

8 The Learned counsel for the applicant make a request to expedite the trial, and since it is informed that the charge has been framed, the Sessions Court Kalyan, is requested to expedite the trial and conclude the same within a period of one year from today.

(SMT. BHARATI DANGRE, J.)