

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1537 OF 2023

Shaikh Sameer Shaikh Kadir,
Age 35 years, Occu. Labourer,
R/o. Khidki Mohalla, Varangaon,
Tq. Bhusawal, District Jalgaon

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr. Joydeep Chatterji, Advocate for Applicant;
Mr. S. P. Tiwari, APP for Respondent

...
WITH

CRIMINAL APPLICATION NO.3749 OF 2023 IN BA/1537/2023

Rakesh S/o. Chango Zope,
Age 37 years, Occu. Service,
R/o. Zopewada, Varangaon,
Tq. Bhusawal, District Jalgaon

.. Applicant
(Original complainant)

Versus

1. Shaikh Sameer Shaikh Kadir
2. The State of Maharashtra

.. Respondents

Mr. Vikrant P. Raje, Advocate for Applicant;
Mr. Joydeep Chatterji, Advocate for Respondent No.1;
Mr. S. P. Tiwari, APP for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 09-11-2023

PER COURT :-

1. Heard the learned counsel for the applicant/accused, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/complainant.

2. The applicant seeks bail in C.R.No.0011/2022, registered with Savda Police Station, District Jalgaon, for the offences punishable under Sections 302, 392 and 201 read with Section 34 of the Indian Penal Code.

3. The first information report and the arguments of the learned respective counsels reveal that the deceased and the accused were well acquainted. They used to be together for various purposes. The first informant, the son of the deceased, reported that his father was missing. Therefore, he took his search with relatives and friends and, lastly, lodged a missing report. The police registered a crime. During the course of investigation, the police discovered that the deceased was lastly seen in the company of the applicant. Hence, the police recorded statements of various witnesses on the information received from time to time. Lastly, the applicant was arrested.

4. The learned counsel for the applicant has vehemently argued that the witnesses of 'last seen together' were suspicious. There was no test identification parade. There is no consistency in the statements of the witnesses about 'last seen together' story.

5. One of the witnesses, namely, Shaikh Rizwan stated that the accused asked him to hand over his mobile handset to the daughter of the applicant, but the statement of his daughter was not recorded. There was inordinate delay in registering the crime.

The so-called recovery of the articles under Section 27 of the Indian Evidence Act, is also suspicious, as the time mentioned therefor reveals that the police travelled 20 Kms. distance within 9 minutes. He also argued that the statement of the petrol pump attendant is recorded belatedly. The CA report does not support the prosecution. The blood group of the deceased was not identified. The call detail record of the cell phone of the deceased for the relevant time reveal that his location was in the State of Madhya Pradesh.

6. The applicant was a good friend of the first informant, the son of the deceased. He talked to him when the complainant was coming from Goa. The oral evidence collected against him is not sufficient to prove the chain of circumstances. The prosecution case rests on the circumstantial evidence, but it is suspicious. The investigation has been completed. Nothing is to be recovered from the applicant. Hence, he may be granted bail.

7. The learned counsel for the complainant and the learned A.P.P. for the State would submit that the conduct of the applicant as regards returning four wheeler to Aasif @ Kalu Hussain taken before the incident, raises a suspicion. This witness had noticed that the deceased and the accused were going in his car. His unnatural conduct was that when he returned the said car, instead of returning the car to him, he parked the car at washing center

and asked him to get it from that washing center. They have also pointed out the statement of the owner of the washing center. He stated that the vehicle was not dirty and there was no reason to wash it. They would submit that the maternal aunt of the applicant stated that after the incident the accused gave one plastic bag for keeping it with her house. However, her son out of curiosity checked the carry bag and found the golden ornaments therein. Those ornaments were belonging to the deceased. There is evidence which supports the prosecution case. They prayed to dismiss the application.

8. Perused the chargesheet.

9. It is not in dispute that the deceased and the applicant were knowing well each other. The accused used to go to the house of the deceased. Witnesses on 'last seen together' with deceased support the prosecution case. The owner of washing center has specifically stated that vehicle was not so dirty, it needed to be washed. Instead of handing over the Car directly to its owner, giving the Car directly to washing center, raises a reasonable doubt about his conduct. Unless specifically explained, such a conduct support the prosecution. The golden ornaments on the person of the deceased were in the custody of the applicant. They were recovered. Considering the arguments of both sides and documents placed on record, the prosecution has a sufficient

material to believe the chain of circumstances is against the applicant. This being a bail application, the evidence on record is not required to be scanned in detail as if it is a trial. The papers examined, as stated above, are *prima facie* sufficient to believe that the applicant is involved in the serious crime.

10. Hence, for the above reasons, the application stands dismissed.

11. Criminal Application No.3749 of 2023 stands disposed of.

12. Needless to say that the above observations are only for the purpose of bail.

**(S. G. MEHARE)
JUDGE**

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