

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

925 BAIL APPLICATION NO.1961 OF 2022
WITH APPLN/151/2023 IN BA/1961/2022

1. SHRIDHAR @ TILLYA RAM KANHERKAR
2. POOJA VISHAL SURVE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Subhash Jadhavar, Mr. Ingole
Dhanraj S.

APP for Respondent-State : Mr. S. B. Narwade.

Advocate for Complainant to assist APP : Mr. Sandanshiv M. B.

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CORAM : S. G. MEHARE, J.
DATE : 10.01.2023

PER COURT :-

1. Heard the learned counsel for the applicants, learned APP for the respondent-State and learned counsel for the complainant.

2. The applicants have been arraigned as accused for the murder of husband of applicant No.2 Pooja. The applicant Pooja was married to the deceased. The Investigating Officer recorded the statement of the main accused Krushna. It has been transpired that his elder sister had illicit relations with the deceased. The accused Krushna had illicit relations with applicant No.2 Pooja, the wife of the deceased. It is the

prosecution case that the accused Krushna had serious grievance against the deceased as he had developed the extra marital relationship with his married sister. Therefore, he maintained the good relations with the deceased and thereafter he had developed intimacy with accused No.2 Pooja. Then a conspiracy was plotted to eliminate the deceased. Accordingly, the conspiracy was put into action and the deceased was eliminated. It has also been the case of the prosecution that the present applicant No.1 has assisted the applicant Krushna to kill the deceased.

3. Learned counsel for the applicant would submit that the FIR was lodged against unknown person. The confessional statement of the accused is inadmissible. Therefore, the prosecution story cannot be believed that applicant No.1 assisted co-accused to kill the deceased. Nothing has been recovered from him. So far as applicant No.2 Pooja is concerned, on the basis of the story cooked up by the main accused, she has been arraigned as an accused. She has nothing to do with the alleged incident. She has been falsely implicated in the crime. They are languishing behind bar since last seven (7) months. The investigation has been completed. Hence, they may be released on bail.

4. Learned APP would point out that finger prints of present applicant No.1 were found identical on the outer part of the driver side door of the tempo owned by the deceased. The deceased was coming back home in the said tempo and near one temple, he has been killed. The investigation also transpired that the motorbike, which was registered in the name of the brother of applicant No.1 was found lying in a field with flesh stuck up to it. Brother of applicant No.1 has given a statement that the present applicant No.1 was using that vehicle. It is also transpired that applicant No.1 had taken Rs.2800/- from the wallet of the deceased which he has received from the businessman for transporting his clothe bundles. It has also been transpired that out of the said amount, the applicant No.1 paid Rs.2550/- to the mobile shop owner for repairing his mobile. The evidence collected against the applicants, other than the confessional statement of the co-accused proves the chain of circumstances. The prosecution has also the CDR record showing that the applicant No.1 was present in the locality where the incident happened. Accused Pooja made a phone call to the deceased to confirm his location from the phone of her grandmother-in-law and informed the same to the co-accused. Accused Pooja had one secret phone number which she was using to talk only with

accused Krushna. The CDR report also reveals that at the relevant time she had given intimation to him about the location of the deceased. It is the strong circumstantial evidence against the applicants. Hence, they may not be granted bail.

5. Normally, in the case based on circumstances, the evidence lacks to complete the chain of circumstances. However, in the case at hand, applicant No.1 explained that next day of the incident, he had been to the spot of the incident. Many persons touched the tempo of the deceased. However, he has no explanation how his motorbike was found lying in the field. His silence about missing his motorbike goes against him. The finger prints found on the tempo owned by the deceased were also identical to the finger prints of applicant No.1. The CDR supports the prosecution that the applicant was present at the relevant time on the spot of the incident. Applicant Pooja was giving the intimation to the co-accused about the location of the deceased. The phone used by her has been recovered. Considering these important circumstantial evidence, the Court is of the view that this evidence cannot be discarded at this juncture. That is a *prima facie* evidence against the applicants. It appears that the

deceased has been eliminated systematically by plotting the conspiracy. The offence is serious.

6. For the above reasons, the bail application stands dismissed.

7. Criminal application No.151 of 2023 to assist the learned APP is allowed.

(S. G. MEHARE, J.)

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