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BAIL APPLICATION NO.1731 OF 2022

..Applicant

..Respondent

Adv. Inderpal Singh Nirmale for the Applicant.

Mr. S. H. Yadav, APP for the State.

PI-Mr. N.R.Kenche, Khadakpada Police Station is present.

DATE : FEBRUARY 21, 2023

1. Leave to amend. The amendment to be carried out forthwith as name of the applicant is rectified in the records of the Sessions Court.

2. Heard learned counsel for the applicant and learned APP.

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4. The co-accused Motiram Kote filed a criminal bail application No. 1613 of 2020 in this Court for bail. Motiram was released on bail on 03/02/2021. For ready reference, the order dated 03/02/2021 is reproduced hereinbelow.

"1. This is an application for bail in C.R. No. I-84 of 2018 registered with Khadakpada Police Station, Kalyan, Dist. Thane. Initially missing complaint was filed by the wife of deceased Dnyaneshwar Kot on 16th February, 2018. FIR was lodged on 7th March, 2018 for offence under Section 364 of Indian Penal Code. On 9th March, 2018, offences punishable under Sections 302, 201, 34 of Indian Penal Code (for short "IPC") r/w Sections 4 & 27 of Arms Act were registered. The applicant was arrested on 11th March, 2018.

2. The complainant stated that on 13th February, 2018 her husband left house at about 3.30 p.m. and did not return home. Complainant lodged missing complaint. Subsequently, complainant learnt that, on 13th February, 2018 her husband and cousin (applicant) along with Padgha were drinking liquor. Hence, she suspects involvement of applicant and his friend Padgha. Statement of Vinod Sable was recorded on 7th March, 2018. According to him on 8th February, 2018 he saw Dnyaneshwar (deceased) and his friend Padgha. Dnyaneshwar demanded money for drinking liquor. On 10th February, 2018 he made call to him and demanded money for drinking liquor. Nikhil Balu Jadhav @ Padgha was arrested on 8th March, 2018. During investigation Nikhil Padgha made statement that, he would show the place and where body was thrown and stone used in assaulting deceased. The accused then allegedly shown the place. Body of deceased was found. Stone was recovered.

3. Learned counsel for the applicant submitted that there is no direct evidence against the applicant. The case is based on circumstantial evidence. However, the circumstances are not so strong enough to show the complicity of the applicant in the crime. The prosecution is relying on the alleged extra-judicial confession. The said statements were recorded belatedly and they are in the nature of improvement. Recovery of weapon cannot be connected with the crime. The post-mortem report does not indicate any injury by sickle. It is submitted that the prosecution relying upon the

antecedents against the applicant. These are old cases. The offence registered under Section 363 of Indian Penal Code in C.R. No.403 of 2007, has resulted in acquittal.

4. Learned APP submitted that there are strong circumstances against the applicant. The applicant has made extra-judicial confession to witness Varsha Lokesh Korane. The co-accused has also made extra-judicial confession to Bharat Babu Shelar which also implicates the applicant. There is recovery of sickle from the applicant.

5. On perusal of the documents on record it is apparent that, victim was missing from 13th February, 2018. Initially missing complaint was filed on 16th February, 2018, stating that complainants husband is missing from 13th February, 2018. The FIR was lodged on 7th March, 2018. Complainant suspected involvement of applicant and co-accused Padgha. Sickle was recovered from the applicant on 12th March, 2018. The prosecution case proceeds on the basis that the deceased was assaulted by throwing stone on his head. On recovery of sickle it is alleged that deceased was assaulted by sickle. There is no eye witness to the incident. The prosecution is relying upon the statement of Varsha Korane. She is the friend of applicant. The statement bears date of recording as 05th February, 2018. Apparently date is not correct as deceased was missing from 13th February, 2018 and missing complaint was filed on 16th February, 2018 and thereafter FIR was lodged on 7th March, 2018. Learned APP submitted that the said statement is recorded on 11th March, 2018. According to this witness on 13th February, 2018 applicant made calls to her. They also spoke at 11.30 p.m. While talking to applicant he was found normal. On 14th February, 2018 applicant met her at Titwala while she was returning home. He told her that they had fight and she should not call him. On 18th February, 2018 applicant called her and told her to meet him. She met him. He was found in frightened condition. He told that there was fight. From the said statement it can be seen that it was recorded belatedly. There is no confession of killing deceased. After lodging missing complaint during enquiry statement of applicant was recorded on 27th February, 2018. In that statement he had stated that on 13th February, 2018 he had seen Dnyaneshwar (deceased) and Padgha @ Nikhil going together on motorcycle. On 15th February, 2018 wife of deceased met him and he had disclosed about above fact to her. Wife of deceased for the first time suspected involvement of applicant on 7th March, 2018. Statement of Bharat Babu Shelar was recorded. The statement provided to applicant in charge-sheet do not mention date of

recording. According to prosecution it was recorded on 10th March, 2018. According to him, Nikhil @ Padgha told him on 15th February, 2018 that he and applicant had killed Dnyaneshwar Kot and Motiram (applicant) has advised him to switch off phone. The alleged extra-judicial confession was made on 15th February, 2018. Statement was recorded after 20 days. One more statement of Varsha Korane was recorded. There is no date mentioned on the statement. In this statement she stated that on 13th February, 2018 applicant had called her. He gave 5 to 6 calls to her. When he made call at 11.30 p.m. he was found frightened. He told her that he has assaulted one person. Thereafter, he met her on the next day at Titwala. He told her that there was fight with Dnyaneshwar and he along with Nikhil Jadhav has killed Dnyaneshwar. She met applicant on 17th February, 2018 and at that time applicant made the confession. This statement is contrary to the other statement made by her. Statement of Varsha Korane was recorded under Section 164 of Cr.P.C. on 13th March, 2018. In the said statement she stated that applicant had given call to her on 13th February, 2018. On next day he met her and told her that there was fight. Three days thereafter applicant met her and told her that he has assaulted one person. There is no confession that applicant has killed the deceased. Statement of Bharat Shelar was also recorded under Section 164 of Cr.P.C. on 13th March, 2018. He stated that Nikhil told him that they had assaulted one person. He has not named applicant. According to prosecution "Marle" would man killed. However, it is noticed that all these statements are contradictory and recorded belatedly. Prosecution is relying on statement of Babasaheb Waghmare. There is no date on statements. According to prosecution it was recorded on 20th March, 2018. According to him on 12th February, 2018 he saw Dnyaneshwar Kot and two other persons. They were drunk. They went towards NMC gate. Thereafter, he did not see Dnyaneshwar. Learned APP submitted that the witness has identified the applicant. The parade memo is not included in charge-sheet. The circumstance cannot be considered against the applicant. It is pertinent to note that they were allegedly last seen on 12th February, 2018. According to complainant deceased was at home on 13th February, 2018. He left home on that day. There is delay in recording this statement. Statement of Kailas Kot was recorded. Date of recording is not mentioned. According to prosecution it was recorded on 30th March, 2018. According to him on 14th February, 2018 he met applicant. He was with another person whose name was disclosed as Nikhil Jadhav @ Padgha. They consumed liquor. Applicant had

some conversation with Nikhil which was overheard by him. Applicant told Nikhil that he should not disclose anything to anyone and he should leave. This cannot be considered as strong circumstance to show involvement of applicant. Learned counsel for applicant submitted that post-mortem report do not refers to any injury by sickle. The cause of death certificate mentions provisional cause of death as head injury. Post-mortem report refers to opinion of cause of death as head injury in decomposed body. The charge-sheet refers to two other cases registered against applicant. C.C. No. 19 of 2007 is pending. The offences were registered under Sections 143, 147, 149 & 325 of IPC. The other case under Sections 363, 324, 506 r/w Section 34 of IPC registered vide C.R. No. I-403 of 2007 has resulted in acquittal by Judgment dated 14th July, 2014. Considering the above aspects, on stringent condition bail can be granted to applicant. Hence, I pass the following order"

5. So far as the applicant is concerned, there is no recovery at his instance. A sickle which is alleged to be used in the commission of crime is recovered at the instance of co-accused Motiram who has been released on bail.

6. Learned APP submitted that it is the applicant who had disclosed where the body of the deceased was lying. The prosecution case is that both the accused have committed murder of deceased Dyaneshwar. The applicant was arrested on 11/03/2018 and is now in custody for more than 4 years and 11 months. On the ground of parity with accused -Motiram as well as on the ground that the applicant is in custody for 4 years and 11 months with no

possibility of trial concluding any time soon, the applicant can be released on bail. There are 2 criminal antecedents reported against the application; one under sections 3 and 25 of the year 2012 of the Arms Act and the other is under sections 323 and 324 of IPC. Considering the period the applicant spent in custody, the criminal antecedents which are of the years 2011 & 2012 need not come in the way of the applicant getting bail. Hence, the following order.

ORDER

- (i) Bail Application No. 1731 of 2022 is allowed;
- (ii) The applicant- Nikhil Balu Jadhav @ Padgha is directed to be released on bail in connection with C.R. No. 84 of 2018 registered with Khadakpada Police Station, Kalyan, Dist. Thane, on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall not tamper with the evidence.
- (iv) The applicant shall stay out of jurisdiction of Khadakpada Police Station till conclusion of trial.
- (v) The applicant shall furnish the details of his residence after he is released on bail to the

Investigating Officer.

(vi) The applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.

(vii) Application stands disposed of accordingly.

(M. S. KARNIK, J.)