

• • • •

the case of the prosecution that accused No.3 was present at the scene of occurrence. It is pointed out that it is a case of prosecution that he was standing near the building on which terrace the alleged offence was committed. The learned Advocate submitted that only on the basis of the CDR the prosecution has filed this case against the accused No.3. Learned Advocate took me through the record and pointed out that main role is played by accused Nos.1 and 2. It is submitted that accused No.3 has been behind the bars from 29/11/2021. The charges have not been framed. There is no possibility of completion of trial in near future. It is submitted that in the teeth of such weak evidence against the accused No.3, his further incarceration is neither necessary nor warranted. He further submitted that the accused is ready to abide by the conditions that may be imposed by this Court.

3. Learned APP submitted that the CDR of mobile phone of the accused No.3 clearly indicates that on the given date he was in contact with the accused No.1. Learned APP further submitted that the CDR clearly shows his presence near the spot at the relevant time. The learned APP submitted that there was recovery of a

weapon and other articles at the instance of accused No.1 and accused No.2. The learned APP pointed out that till date the CA report has not been received. It is submitted by the learned APP that if the accused No.3 is released on bail, then he would tamper with the prosecution evidence and pressurise the prosecution witnesses.

4. I have gone through the record and proceedings. It is seen that except CDR of the mobile phone of accused No.3 there is no other evidence against him. I am conscious of the fact that at the stage of deciding the bail application, the merits of the matter are cannot be gone into. Similarly, the evidence cannot be tested on the touchstone of credibility. It is further pertinent to mention that for the purpose of deciding the bail application the Court has to consider the material prima facie and decide the bail application accordingly.

5. It is the case of the prosecution that there was a love affair between accused No.1 and the deceased. The deceased had informed accused No.1 that she was pregnant due to her relationship with accused No.1 and as such she was insisting accused No.1 to marry with her. It is the case of the prosecution that accused No.1 in

connivance with accused Nos.2 and 3 decided to eliminate the deceased. The conspiracy hatched by them was taken to logical end by eliminating the deceased on the terrace of the building. Undisputedly, accused No.3 was not present on the spot at the time of murder. As far as probative value of the evidence in the form of CDR is concerned, that will have to be taken into consideration at the stage of trial. In my view, on the basis of the CDR of mobile phone, accused No.3 cannot be kept behind bars for indefinite period. At this stage, it is pertinent to mention that accused No.3 had no motive to kill the deceased. The accused No.3 and the accused Nos.1 and 2 are the friends. They were in contact with each other. The prosecution in this case would be required to bring home the guilt against accused No.3 within cogent evidence. In the teeth of the evidence against accused No.3 the bail cannot be denied to him. The charges are not framed. Possibility of completion of the trial in near future is very bleak. Therefore, in this case indefinite incarceration of the accused No.3 is neither necessary nor warranted. As far as apprehension put forth by the learned APP is concerned, same can be taken care of by imposing appropriate conditions. Accordingly, I proceed to pass following order:-

ORDER

- (i) The bail application is allowed.
- (ii) The Applicant/accused No.3– Maaz Mohammed Akram Shaikh be released on bail in C.R. No.376 of 2021 registered with V.B. Nagar Police Station, Mumbai, for the offence punishable under Sections 302, 376 and 201 r/w 34 of the IPC, on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties in the like amount.
- (iii) The accused No.3 shall not directly or indirectly tamper with the prosecution evidence.
- (iv) The accused No.3 shall not pressurise, threaten or induce the prosecution evidence directly or indirectly.
- (v) The accused No.3 shall report to V.B. Nagar Police Station, Mumbai on the first day of every month between 11.00 a.m. to 2.00 p.m. till completion of the trial.

6. It is made clear that observations made herein above be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

7. The application stands disposed of in above terms.

(G.A. SANAP, J.)