

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3714 OF 2023

Shrikant Tolu Ghadshi

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. N. N. Gawankar a/w Mr. Shreyas N. Gawankar i/by Mr. Manas
N. Gawankar for the Applicant.

Mr. V. A. Kulkarni, APP for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th APRIL 2024

P.C.:-

1. This is an application for bail in connection with C.R. No. 66 of 2018 registered with Sangmeshwar Police Station, Ratnagiri, for offences punishable under Sections 302, 201, 120-B, 420, 467, 468, 471 and 472 of the Indian Penal Code, 1860 ("IPC" for short). First information report (FIR for short) was lodged on 3rd July 2018 by the police Head Constable attached to Sangmeshwar Police Station, Ratnagiri.

2. The case of the prosecution is that missing complaint was lodged with N. M. Joshi Marg Police station, Mumbai on 19th March 2018. Deceased Smita Kusurkar had left house on 11th July 2018. Thereafter, she did not return home. The husband lodged missing complaint. Subsequently, the information was received that the victim has executed

some land transactions at Sangmeshwar, Ratnagiri and there is likelihood that she must have visited the said place. N. M. Joshi Marg Police Station forwarded letter to police alongwith the missing complaint and the letter forwarded by the son of the victim dated 24th July, 2018. Subsequently, it was found on secret information that one person has arrived in Ratnagiri and his movement is suspicious. He was apprehended. He disclosed his name as Shrikant Ghadshi (Applicant). He was interrogated. He was arrested under Section 41(1)(B)(BA) on 29th July 2018. He was kept in Devrukh lock up. He was arrested in the present case on 31st July 2018. At his instance, dead body of the victim was recovered. It is alleged that the applicant had money transactions with the deceased. He had obtained Rs.25,00,000/- from her. There was property transaction. Agreement/memorandum of understanding was executed between them with regards to loan availed by the applicant. It is also alleged that, fake transaction was executed for purchase of property with the deceased in the name of the person who was dead. The deceased had realized about false transaction and she was demanding money from the applicant. Hence, the applicant and accused No.2 Umesh @ Aba Jagannath Bhosale had acted in connivance with each other and committed her murder. Applicant was arrested. Investigation was completed and the charge-sheet was filed.

3. The applicant had preferred an application for bail before this Court which was withdrawn vide order dated 3rd January 2020 on the ground that

the applicant had preferred application for bail before the Sessions Court. Thereafter, the applicant had preferred application for bail before the Sessions Court which has been rejected vide order dated 7th February 2020. The applicant preferred another application for bail before this Court which was allowed to be withdrawn vide order dated 2nd August 2023. The said order was indicate that, this Court was not inclined to grant bail. However, since, the applicant is in custody for above five years. The trial Court was directed to expedite the trial and conclude the same expeditiously. Liberty was granted to the applicant to move the application for bail in the event trial is not concluded within one year.

4. Learned Advocate for the applicant submitted as under:-

- (i) The applicant is in custody for five years and seven months. The trial has proceeded with slow pace.
- (ii) The list of witnesses cited by the prosecution indicate that, the prosecution is relying upon the statement of about 100 witnesses. The Investigation Officer made a statement before the trial Court that, the prosecution proposes to examine about 64 witnesses. The prosecution has so far examined about four witnesses. Last witnesses was examined on 15th January 2024.
- (iii) Trial was expedited by this Court and liberty was granted to the applicant to move the application for bail in the event the trial is not

concluded within one year. Considering the fact that, the prosecution proposes to examine several witnesses, it would not be possible to conclude the trial within short span of time.

(iv) Although, the period of one year in terms of order dated 2nd August 2023 is not over, considering the number of witnesses to be examined and the speed in which trial is proceeding and also considering that the applicant is in custody for about five years and seven months and the new ground urged by the applicant which was not available to the applicant while earlier application for bail preferred by the applicant was adjudicated.

(v) Charge-sheet was filed against the applicant and the other accused in FIR No. 66 of 2018 on 29th October 2018. After filing of charge-sheet, Investigating Officer filed certain additional documents before the Sessions Court by forwarding letter dated 31st January 2019. In the said list of document, Investigating Officer has annexed the opinion of Dr. Ambarish N. Aagashe dated 15th October 2018. Though, The said report dated 15th October 2018, the same was not produced by the Investigating Officer at the time of filing charge-sheet. While taking search of the court file dated 7th February 2024, the advocate for the applicant appearing in the trial Court learnt about letter dated 15th October 2018 and the application preferred for certified copies of the additional documents filed by Investigating Officer. Copies of the document were furnished by Advocate for applicant. The document contains letter/report dated 15th October 2018

issued by Investigating Officer.

(vi) The post-mortem notes dated 30th July 2018 indicate that, the cause of death was reserved. In the final death report dated 5th December 2018, Dr. Agashe has given opinion as to the cause of death as “asphyxia due to strangulation”. The report dated 15th October 2018 which is not part of charge-sheet throws considerable doubt on the theory of strangulation as alleged by the prosecution. The report dated 15th October 2018 was not available on 2nd August 2023, while adjudicating Criminal Bail Application No. 1734 of 2020.

(vii) Both the opinions are in contrast to each other, which goes to the root of the matter and which would affect the prosecution case. This factum may be considered as the change of circumstance for entertaining this application for bail. Even otherwise, there is no eye witness to the incident. The entire case is based on the circumstantial evidence. In such circumstances, the accused cannot be incarcerated in custody for indefinite period.

5. Learned APP submitted that, the previous application for bail was rejected by this Court. Trial was expedited and the Court was directed to conclude the trial within one year. However, the applicant moved this application before lapse of one year. There are strong circumstances against the applicant showing involvement in this crime. The accused has

committed offence under Section 302 of IPC. Although, the case is based on circumstantial evidence, there is strong circumstances against the applicant. Although, the prosecution has cited list of several witnesses, the prosecution may examine about 25 witnesses. The disparity between the information given by Dr. Agashe will have to be considered during trial. It is disputed question of fact. The said issue cannot be considered as ground for grant of bail. The applicant had shown spot where the body of the deceased was recovered. The prosecution has relying upon the statements of two witnesses namely Harichandra Balu Monde and Mangesh Uttam Gamare. The deceased was last seen in the company of the applicant. The prosecution rely upon the statement of Mangesh Gamare, who has stated that, the applicant had visited servicing centre on the date of incident. The incident is of serious nature. The trial has already commenced. Trial has commenced. Four witnesses are examined. The bail may not be granted to the applicant.

6. It is not in dispute that the prosecution case is based on circumstantial evidence as there is no eye witness to the incident. The applicant is in custody for a period of five years and seven months. The post-mortem report indicate that opinion about the cause of death was reserved. The final cause of death referred to the fact that Dr. Agashe has performed post-mortem examination on 30th July 2018 and viscera

preserved for chemical analysis and sent to forensic laboratory, Kolhapur. From the Post-mortem examination and CA report, final cause of death is “asphyxia due to strangulation”. The Investigating Officer has forwarded a letter dated 15th August 2018. Dr. Agashe has given his opinion whether there are any injuries on the body of the deceased or injuries are on neck of the deceased and various other question relating to the cause of death of the victim. Letter dated 15th October 2018 given by Dr. Agashe which has been annexed to this application indicate that Dr. Agashe has furnished opinion about cause of death of the victim stating that, there were no mark of the injuries on the person of the deceased, it is not possible that there is fracture of bone of the hands in the event scuffle between the parties, the neck bone of the deceased could be fractured on account of strangulation. No marks were found on the neck of the deceased while conducting post-mortem. There are contradictory report on record. The case is based on circumstantial evidence. The applicant is in custody for a period about five years and seven months. It is pertinent to note that, the FIR was registered on 30th July 2018. Prior to registration of FIR, the husband of the deceased had lodged the missing complaint. The FIR in the present case was recorded by police official alleging that, information was received that one suspected person has come in the village and the applicant was apprehended on 31st July 2018. It is pertinent to note that, statement of Harishachandra Mundhe relied upon by prosecution to establish circumstance of last seen

together was recorded on 1st August 2018 which is apparently after the arrest of the applicant. On perusal of the said statement it is apparent that, according to this witness it was stated that, the deceased has visited his lodge on 18th June 2017. She had occupied the room at his lodge. On 18th June 2017, the accused (applicant) came at the lodge and the deceased left with him. The applicant had allegedly told him that there is property transaction with the deceased. The statement further indicate that, victim returned alone and checked out from lodge on 19th June 2017 at about 09:00 am. Thus, while leaving the lodge, the victim had left alone. It is not the case of the prosecution that at that point of time the accused was accompanying the deceased. The visit of applicant being in company of victim on previous day cannot be considered as strong circumstance as last seen toger since the victim had returned back to the lodge and then left the premises alone on the next day. The statement of Mangesh Gamare was recorded on 2nd August 2018 after the arrest of the applicant. The statement indicate that, the applicant had visited service centre and the witness has learnt the name of the applicant and other person. During the course of investigation, three other persons were arrested. They are granted bail. The prosecution has examined about four witnesses. Apparently, last witness was examined on 15th January 2024. Thereafter, no witness has been examined. In the meantime witness summons has been issued to the PW-5 on 15th January 2024.

7. Considering the nature of evidence and fact that number of witnesses are proposed to be examined and since the applicant is in custody for about five years and seven months, bail can be granted to the applicant.

ORDER

- (i) Criminal Bail Application No.3714 of 2023 is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R. No. 66 of 2018, registered with Sangmeshwar Police Station, Ratnagiri, on his executing PR Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;
- (iii) Applicant shall report concerned police station once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders.
- (iv) Application stands disposed off.

(PRAKASH D. NAIK, J.)