

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3045 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Mrs. Nanda Sachin Mhamane ...Applicant

Versus

State of Maharashtra ...Respondent

AND

BAIL APPLICATION NO. 457 OF 2024

Abhishek Bhaagdatt Mishra ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. S. S. Sawalkar, a/w Mr. Kunal Aher, Ms. Manjiree Dhuri,
Punam Karande, Ashwini Ghadge, and Gayatri Yadav,
for the Applicant in BA/3045/2023.

Mr. Satyam Pille, a/w Sumeet Gemnani, for the Applicant in
BA/457/2024.

Mr. S. R. Aagarkar, APP for the State/Respondent in both
BA.

PSI Ankush Watungase, Kalyan Taluka Police Station,
present.

CORAM: N. J. JAMADAR, J.

Reserved On: 2nd April, 2024

Pronounced On: 10th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the applicants and the
learned APP for the State.

2. The applicants, who are arraigned in CR No.245 of 2023
registered with Kalyan Taluka Police Station, for the offences
punishable under Sections 120B, 302 and 201 read with

Section 34 of the Indian Penal Code, have preferred these applications to enlarge them on bail.

3. Sachin (the deceased) was the brother of the first informant. The deceased was residing at Titwala alongwith his wife Nanda, the applicant in BA/3045 of 2023, and daughter Vaishnavi. The deceased and the applicant were running an electronic store.

4. On 7th April, 2023 applicant Nanda lodged a report to the effect that on 6th April, 2023, after they returned to the shop from temple, the deceased asked her to shut the shop and went to the market in search for a shop premises on ownership basis. He did not return till the next morning. She had made a number of calls on the mobile phone of the deceased but there was no response. Hence, she lodged missing report.

5. The relatives of the deceased and the Sunil Mourya, an employee, in the shop of the deceased and others went in search of the deceased. Wagon-R car of the deceased was located near Dahagaon road. Its number plates were missing. Driver's seat was bent backward. While the relatives of the deceased and the police party were searching the deceased, the body of the deceased was found dumped in a ditch, 5 ft. away from Dahagon road.

6. During the course of investigation Sunil Mourya (A1) gave evasive answers. As the police entertained suspicion and further interrogated Sunil Mourya (A1), he caved in. It transpired that the applicant Nanda (A4) and Sunil Mourya (A1) were in a relationship outside marriage. In order to eliminate the deceased in pursuance of criminal conspiracy on 6th April, 2023, the deceased was taken in the car on the pretext that there was an order for solar panel installation. Co-accused Shubham Gupta (A3) and Abhishek Misrha (A2); the applicant in BA/457/2024, also accompanied Sunil Mourya (A1). Near Delhi Public School, they alighted from the car and Sunil Mourya (A1) strangled the deceased by means of *dupatta* of Nanda (A4). The number plates of the car were removed and the body of the deceased was dumped in the ditch.

7. The applicants and co-accused came to be arrested. Pursuant to discovery made by Sunil Mourya (A1) the number plates of the car and the *dupatta* by means which the deceased was allegedly strangled came to be recovered. The applicant Ahishek Mishra (A2) allegedly made discovery leading to the recovery of the laptop of the deceased.

8. Mr. Sawalkar, the learned Counsel for the applicant Nanda (A4), submitted that the applicant has been roped in on the

basis of mere suspicion. There is no material to show that either the applicant was in a relationship outside marriage with Sunil Mourya (A1) or the applicant was a privy to the alleged conspiracy. Neither the applicant was present at the time of the alleged occurrence nor anything has been recovered pursuant to the discovery made by the applicant. It is a case of no evidence qua the applicant, urged Mr. Sawalkar.

9. Mr. Pille, the learned Counsel for the applicant Abhishek (A2), submitted that part from the alleged discovery made by Abhishek Mishra (A2) there is not an iota of evidence against the applicant. The recovery of the laptop, even if taken at par, does not connect the applicant with the crime as there is no evidence to show that the deceased was then carrying the laptop. Therefore, the applicant deserves to be enlarged on bail.

10. Mr. Aagarkar, the learned APP, stoutly resisted the prayer for bail. It was submitted that there is material in the form of CDR which shows that the location of Sunil Mourya (A1) and the deceased was same. Moreover, at the time of the alleged occurrence the applicant Nanda (A4) had made calls to Sunil Mourya (A1). These two circumstances squarely incriminate both Sunil Mourya (A1) and Nanda (A4). Mr. Agarkar further submitted that though there is no other material qua Abhishek

Mishra (A2) apart from the discovery made by him yet the disclosure statements of both Sunil Mourya (A1) and Abhishek Mishra (A2) indicate that Abhishek Mishra (A2) and Shubham Gupta (A3) had killed the deceased alongwith Sunil Mourya (A1). Therefore, having regard to the gravity of the offences, the applicants do not deserve to be enlarged on bail.

11. I have given anxious consideration to the rival submissions. Evidently, the prosecution case rests on circumstantial evidence. The circumstances that can be pressed into service against the applicant Abhishek Mishra (A2) are: Sunil Mourya (A1) made a disclosure statement in which the applicant Abhishek Mishra (A2) was named as an accomplice and pursuant to the said disclosure statement broken number plates and the *dupatta*, by means of which the deceased was allegedly strangled, were recovered. Abhishek Mishra (A2) himself made a discovery leading to the recovery of the laptop allegedly belonging to the deceased. It is trite a disclosure statement made by one accused is not a legal evidence against the non-maker, co-accused. Resultantly, the only circumstance against Abhishek Mishra (A2) appears to be the discovery allegedly made by him leading to the recovery of the laptop.

12. At this stage, the submission on behalf of the applicant Abhishek Mishra (A2) that there is no material to show that at the time of the alleged occurrence the deceased was carrying a laptop, carries substance. In the absence of such evidence, *prima facie* it would be difficult to establish the nexus between the applicant and the alleged offences. Qua the applicant – Abhishek Mishra (A2) there is no other material in the nature of CDR or location which may establish the presence of Abhishk Mishra (A2) at the place of the occurrence. The sole circumstance of recovery of the laptop *prima facie* may not be sufficient to bear the weight of accusation of being a privy to the murder of the deceased.

13. On the aspect of the complicity of Nanda (A4) again the only circumstance sought to be pressed into service appears to be that of the CDR, which reveals that on the night of occurrence there were in all four calls between the applicant and Sunil Mourya (A1). To appreciate the weight to be attached to this circumstance, even at this stage of considering the prayer for bail, it may be necessary to delve into the alleged motive for the crime.

14. The prosecution alleges that Nanda (A4) and Sunil Mourya (A1) were in a relationship outside marriage. Probably the

deceased had an inkling about the same and, therefore, the deceased used to scold Sunil Mourya (A1) frequently. On the aspect of the alleged relationship outside marriage, the statements of the relatives of the deceased, *prima facie*, do not throw any light. The statement of another co-employ Alpesh Mande also does not seem to have incriminating tendency. Alpesh Mande, claimed that he had seen some proximity between applicant Nanda (A4) and Sunil Mourya (A1) however he did not realise that there was relationship outside marriage between the applicant Nanda (A4) and Sunil Mourya (A1). Alpesh Mande did state that the deceased might have an inkling of the said relationship and frequently scolded Sunil Mourya (A1). The rest of the statements of the relatives of the deceased are based on the alleged disclosure made by Sunil Mourya (A1) in the presence of police.

15. Apart from the aforesaid material, the prosecution heavily banks upon the CDR which shows that the applicant and Sunil Mourya (A1) were in regular touch and on the night of occurrence also the applicant had made calls to Sunil Mourya (A1).

16. It is trite, to sustain a conviction on the basis of circumstantial evidence, the circumstances should have

conclusive tendency and lead to the only hypothesis of the guilt of the accused and should be incompatible with the innocence of the accused. In the case at hand, Sunil Mourya (A1) was an employee in the electronic shop run by the applicant. In the absence of material to show that they were in a relationship outside marriage, an inference of such relationship cannot be drawn solely on the basis of the CDR. I am, therefore, persuaded to hold that a *prima facie* case for grant of bail is made out.

17. The investigation is complete. Charge-sheet has been lodged. The applicants have been in custody for about a year. Further detention of the applicants, especially in the backdrop of the nature of the evidence and material qua the applicants, does not seem warranted.

18. Hence, the following order;

: O R D E R :

- (i) The applications stand allowed.
- (ii) Mrs. Nanda Sachin Mhamane - the applicant in BA/3045/2023 and Abhishek Mishra – the applicant in BA/457/2024 be released on bail in C.R. No.245 of 2023 registered with Kalyan Taluka police station, on furnishing a P.R. Bond in the sum of Rs.30,000/-, each,

with one or two sureties in the like amount.

- (iii) The applicants shall mark their presence at the concerned police station on the first Monday of every alternate month between 10.00 am. to 12.00 noon for a period of three years or till the conclusion of the trial, whichever is earlier.
- (iv) The applicants shall not tamper with the prosecution evidence. The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicants shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on

the guilt or otherwise of the applicants and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications disposed.

[N. J. JAMADAR, J.]