

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1359 OF 2024

Rahul @ Pritipal Ramkishan Yadav	...Applicant
vs.	
The State of Maharashtra	...Respondent

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PAREKAR

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Mr. R.D. Suryawanshi, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.
Ms. Rupali Gand, PSI, Bhiwandi Taluka police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 18, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in Sessions Case No. 216 of 2015 arising out of C.R. No. 271 of 2014 registered with Bhiwandi Taluka police station for the offences punishable under sections 302 and 201 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. The indictment against the applicant and the co-accused is that on 3rd December, 2014 the applicant and the co-accused had boarded the Innova car of Prakash Kadu (the deceased), on the pretext that they were to travel to Dahisar Check Naka. Near Malji Pada, the applicant and the co-accused Shankar Kurhad made the deceased stop the vehicle on knife-point. As the deceased resisted, the applicant and the co-accused, including a child in conflict with law, assaulted the deceased. He was taken to a secluded place towards Bhiwandi. The deceased was killed and the applicant and

co-accused decamped with the car. On 5th December, 2014 the body of the deceased was found by Dilip Bhoir (the first informant) along Bhiwandi-Parol road.

4. Mr. Suryawanshi, the learned counsel for the applicant, submitted that the applicant has been in custody since December, 2014. The prosecution case rests on circumstantial evidence. The co-accused Shankar Kurhad and Akash Bansode have been released on bail. Only two witnesses have been examined. It is unlikely that the trial can be concluded in near future. Therefore, the applicant be enlarged on bail.

5. Mr. Agarkar, learned APP resisted the prayer for bail. It was submitted that the applicant had made a disclosure statement and pointed out the places where the deceased in the instant case and another victim in an identical incident had been killed and dumped. Lying emphasis on the fact that the applicant has also been arraigned in C.R. No. 21 of 2014 registered with Waliv police station for the offences punishable under sections 394 and 397 of the Penal Code and C.R. No. 180 of 2014 registered with Virar police station for the offences punishable under sections 302 and 201 of the Penal Code, it was submitted that the applicant does not deserve to be enlarged on bail.

6. From the perusal of the material on record, it appears that

the prosecution banks on the disclosure statement made by the applicant and the co-accused leading to the discovery of the facts including the places where the offences were committed and the weapon of offence and other incriminating articles were thrown. It appears that in those disclosure statements the applicant and the co-accused have named the other accused as accomplices.

7. Evidently, the prosecution case rests on circumstantial evidence. The discovery allegedly made by the accused appears to be the prime circumstance sought to be pressed into service against the applicant and the co-accused. It is trite that a disclosure statement made by an accused is not legal evidence against non-maker co-accused.

8. Since the co-accused namely, Shankar Kurhad, Jatin Pilojpara, Akash Bansode have been released on bail, the claim that the applicant also deserves the same dispensation merits consideration. Since it is alleged that the applicant along with the co-accused allegedly boarded the car of the deceased, prima facie, it would be difficult to draw a distinction between the role attributed to the applicant and the co-accused, who have been released on bail.

9. The circumstance that the applicant has been arraigned in other crimes of similar nature puts the Court on guard. However, the period of incarceration of almost nine and half years, can not be

lost sight of. The fact that the prosecution rests on the circumstantial evidence, makes further detention of the applicant tenuous.

10. The period of incarceration is long by any standard. Such a prolonged period of incarceration without a realistic prospect of expeditious conclusion of the trial entitles the accused to bail, even if there is a strong prima facie case.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 271 of 2014 registered with Bhiwandi Taluka police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Bhiwandi Taluka police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- 4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] 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 applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)