

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1210 OF 2023

Narendra Umesh Mane

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2024.01.06
16:23:44 +0530

Mr. Mihir Desai, Senior Advocate a/w. Mr. Shailendra Singh, Ms.
Aarti Yadav and Ms. Nikita Pandey, for the Applicant.
Ms. Geeta Mulekar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 05, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned
APP for the State.

2. The applicant who is arraigned in C.R. No. 467 of 2020
registered with Nagpada police station for the offences punishable
under sections 120-B, 302, 201 read with 34 of Indian Penal Code,
1860 and sections 37(1) and 135 of Maharashtra Police Act, 1959
seeks to be enlarged on bail.

3. The indictment against the applicant and co-accused Akash
Nikam is that the applicant and Santosh Jadhav (the deceased) had
indulged in consensual physical relations and when the applicant
declined to continue the relationship, as his marriage was settled,
the deceased coerced the applicant to have physical relations by

giving threats of making the video containing explicit acts viral. The applicant was thus enraged.

4. The applicant along with co-accused allegedly hatched conspiracy to eliminate the deceased. In pursuance of that conspiracy on the night intervening 26th and 27th August, 2020 the deceased was taken to secluded place at Bhiwandi-Nashik highway on the pretext of having a party and he was killed. The dead body was buried in a pit.

5. On the basis of the telephonic conversation which the applicant and the deceased had, the applicant and came to be apprehended. The applicant allegedly pointed out the place where the body of the deceased was buried. The dead body was exhumed. Pursuant to the discovery made by the applicant and co-accused, the weapon of offence and the implements to dig the pit and bury the deceased were discovered.

6. Mr. Mihir Desai, learned senior counsel for the applicant submitted that the prosecution case entirely rests on circumstantial evidence. The circumstances sought to be pressed into service against the applicant do not have incriminating tendency. It was urged that there is a huge interval between the time the deceased was allegedly seen in the company of the applicant and the co-accused and the discovery of the dead body of

the deceased. The evidence of discovery leading to the recovery of the motor cycle, the identity of the shops from where the weapon of offence and the implements were allegedly acquired by the accused, is not free from infirmities. The learned counsel further submitted that the co-accused Akash Nikam was granted bail by this Court by an order dated 6th October, 2022. The role attributed to the applicant and the co-accused as regards the core of the occurrence is substantially similar. Therefore, the applicant deserves the exercise of discretion.

7. The learned APP resisted the prayer for bail. It was submitted that the applicant was the prime conspirator. The applicant had a strong motive to eliminate the deceased as the later was insisting for continuation of the physical relations. In the face of the material on record, according to the learned APP, the applicant does not deserve bail.

8. While releasing the co-accused on bail, this Court noted that the applicant and the co-accused had allegedly hired Shovel (फावडा) and Polar (पहार) on 23rd August, 2020. This Court was not persuaded to give much weight to the statement of Kunal Parmar and Jayantilal Parmar from whom the applicant and the co-accused had allegedly purchased the knife as the statements indicated that the police had elicited the information by pointing the accused. It was

further noted that the time gap between the last seen and the recovery of the dead body was too wide to give rise to various possibilities.

9. The aforesaid reasons govern the claim of the applicant for bail with equal force. The additional circumstance, which according to the prosecution, incriminates the applicant is the recovery of the dead body of the deceased on the pointing out by the applicant.

10. I have perused the scene of occurrence panchanama drawn on 11th September, 2020. It does not appear that the discovery of the place where the dead body was allegedly buried was preceded by any disclosure statement made by the applicant. Prima facie, it appears that the investigating officer visited the said place upon being apprised by the applicant and in the presence of the public witnesses, the dead body was exhumed. Whether the said act attributed to the applicant, would amount to conduct admissible under section 8 of the Evidence Act, in the absence of a disclosure statement under section 27 thereof, would be a matter for consideration at the trial.

11. Apart from the aforesaid circumstance, the rest of the incriminating circumstances attributed to the applicant and the co-accused appear to have an element of commonality. The reasons which weighed with this Court in exercising the discretion in favour

of the co-accused Akash Nikam with regard to those circumstance, would apply squarely to the applicant as well.

12. Evidently, the case rests on circumstantial evidence. Indeed there is a time gap of more than 15 days since the deceased went missing and his body was found on 11th September, 2020. The situation thus become impregnated with various possibilities. As noted above, the applicant had allegedly hired the implements, a couple of days prior to the alleged occurrence. The statements of the witnesses regarding purchase of knife were found to be not weighty enough. In the circumstances, there does not appear much qualitative difference between the role attributed to the applicant and the co-accused.

13. Moreover, the applicant has been in custody since 12th September, 2020. The applicant appears to have roots in society. Possibility of tampering with evidence, in the backdrop of the nature of the accusations, and fleeing away from justice appears to be remote. In the aforesaid view of the matter, I am persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application is allowed.
- 2] The applicant Narendra Umesh Mane be released on bail in C.R. No.467 of 2020 registered with Nagpada 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 before the concerned police station on first Saturday of every trimester in between 11 am to 1 pm till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- 4] The applicant shall not tamper with the prosecution evidence. The applicant 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.
- 5] On being released on bail, 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.)