

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1778 OF 2023

Vijay Mulchand Prajapati

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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Mr. Meghashyam Kocharekar, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 18, 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. 302 of 2021 registered with Padgha police station for the offences punishable under sections 302 and 201 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. On 7th July, 2021 dead body of an unknown person was found at Talvali-Kalyan road which led to Supreme Company within the limits of village Sape. The body was in a decomposed state. The autopsy surgeon of J.J. Hospital opined that the cause of death was 'throat injury with multiple fracture'. However, the final cause of death was reserved awaiting reports of analysis.

4. During the course of investigation, it transpired that the deceased was Dilipkumar Pal. He was a resident of Uttar Pradesh.

The sister of the applicant was in a relationship with the said Dilipkumar. The father of the applicant had decided to solemnize marriage of the sister of the applicant with Dilipkumar. The co-accused Ankit Parmar had allowed the deceased Dilipkumar to stay at his flat. Later on Dilipkumar had started to reside with his relatives.

5. On 3rd July, 2021 the co-accused Ankit had called the applicant and his father Moolchand for a meeting with Dilipkumar as the later was to go to his native place. They reached hotel Green Spice beyond Gandhari bridge. They all had dinner. When the father of the applicant proposed to return home, the applicant asked to him proceed ahead and stated he would return later on.

6. On the next day, the co-accused Ankit Parmar allegedly informed Moolchand that on the previous night, there was scuffle between the applicant and the Dilipkumar, while they were pillion riding his motor-cycle. They all fell down from the motor-cycle. The applicant assaulted the deceased by means of knife, and pushed the dead body on the road side.

7. The applicant came to be arrested. Pursuant to the disclosure statement made by the applicant, a stone was recovered.

8. The learned counsel for the applicant submitted that apart from the statement made by the co-accused Ankit and the alleged

extra judicial confession made by the applicant, there is no material to connect the applicant with the alleged offence. There was no motive as it was already decided that the marriage of the sister of the applicant would be solemnized with the deceased. The applicant is in custody since 22nd July, 2021. Hence, the applicant be released on bail.

9. The learned APP resisted the prayer for bail. It was submitted that there is clear evidence to show that the deceased, the applicant and the co-accused were together on the night of 3rd July, 2021 and a decomposed body of the deceased was found on 7th July, 2021. In addition to this, the recovery of stone and the statements of witnesses which show that the applicant had purchased a knife from a pan stall, squarely incriminate the applicant. Learned APP laid emphasis on the fact that father of the applicant has stated that the applicant had confessed the guilt.

10. I have carefully considered the report under section 173 of Code of Criminal Procedure and the documents annexed with it. Primarily, it is a case of circumstantial evidence as the applicant as well as Ankit have been implicated as accused.

11. So far as the extra judicial confession allegedly made by the applicant before his father Moolchand and sister Pooja, it would be suffice to note that those statements do not qualify as extra judicial

confession as those witnesses have stated that in the presence of the police the applicant allegedly confessed that he had killed the deceased. Those statements of father and sister of the applicant are, therefore, clearly inadmissible in evidence.

12. It is true there is a statement of the father of the applicant which indicates that on the night of the occurrence the applicant, co-accused and the deceased were together at about 10.45 pm. However, the dead body of the deceased was recovered on 7th July, 2021. There was a sharp cut throat injury on the anterior aspect of the neck. Prima facie, there was an interval between the time the applicant, the co-accused and the deceased were found together and the dead body of the deceased was recovered giving scope for many possibilities.

13. Apart from the evidence of last seen together, prima facie, the evidence of the discovery of the stone does not seem to have much incriminating tendency as the seizure memo does not indicate that there were blood stains on the said stone.

14. The recovery of knife sought to be attributed to the applicant by examining two witnesses is also prima facie, fraught with infirmities. Kiran Gami stated that the knife which was shown to the witnesses was not purchased from his shop. Irfan Sayyed, another pan stall operator, stated that he learnt from the police that

the knife was purchased by the applicant.

15. In the aforesaid view of the matter, prima facie, it appears that except the circumstance of last seen together, other circumstances pressed into service on behalf of the prosecution do not appear to have definite incriminating tendency. The applicant is in custody since 26th July, 2021. It is unlikely that the trial can be concluded in a reasonable time. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No.302 of 2021 registered with Padgha 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 Padgha police station once in two months on the first Monday of the month in 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.)