

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3074 OF 2023

Shruti Prabhakar Ganji	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. S. S. Sawalkar, for the Applicant.
Mr. S Kak, APP, for the Respondent-State.
Mr. V. B. Badhe, API, Narpoli Police Station, Bhiwandi.

CORAM : N. J. JAMADAR, J.

DATE : 2nd May, 2024

P.C.:

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

2. The applicant is arraigned in C.R. No. 500 of 2021, registered with Narpoli Police Station, Thane for the offences punishable under Sections 120B, 302, 201, 182(A) and 114 read with Section 34 of Indian Penal Code, 1860.

3. Prabhakar Ganji (the deceased) was the husband of the applicant. There was marital discord between the applicant and the deceased. The applicant desired to obtain a divorce from the deceased but the latter was not willing to put an end to their marital bond. The applicant was allegedly in a relationship outside marriage with Nitesh Wala - A3. The applicant, Nitesh - A3 and accused no. 2 - Priya Nikam, a friend of the applicant hatched a conspiracy to kill the deceased by employing a contract killer. The

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accused no. 4 and two absconding accused were hired for the said purpose. There were meetings between accused nos. 1 to 4 and the absconding accused, at Bhalchandra Snacks Corner. The applicant had allegedly pledged her gold ornaments with Sinduri Jewellers and obtained a sum of Rs. 1,00,000/- to pay the same to accused no. 4 and absconding accused.

4. On 31st July, 2021, the accused no. 4 and the absconding accused hired the car of the deceased on the pretext that they were to travel to Mumbai. On the pretext that the accused no. 4 and the absconding accused were to take a break for eating Chinese food, they asked the deceased to halt the car and one of the absconding accused strangled the deceased with nylon rope while accused no. 4 and another absconding accused caught hold of the deceased.

5. The learned Counsel for the applicant submitted that there is no material to show that the applicant had entered into a conspiracy to kill the deceased. The applicant has been roped in on the basis of suspicion due to marital discord. Nothing has been recovered at the instance of the applicant. There is no material to indicate that the applicant was in touch with accused no 4 or the absconding accused, who allegedly killed the deceased. The applicant has been in custody for almost three years. Therefore, the applicant be enlarged on bail.

6. The learned APP resisted the prayer for bail. It was submitted that there are circumstances which squarely incriminate the applicant. Attention of the Court was invited to the statements of the jeweller that the applicant had allegedly pledged the gold ornaments and the hoteliers, in whose hotel, the applicant and the co-accused had met and hatched the conspiracy to kill the deceased. Attention was also invited to the Panchnama of seizure of the mobile phones of the applicant and accused no. 4. In the mobile phone of accused no. 4, a photograph of the deceased, purportedly forwarded by applicant, was found.

7. Placing reliance on the statements of the Advocate, whom the applicant had repeatedly contacted in connection with the marital discord, and the statement of Ashish Chauhan, a friend of accused no. 2, who had stated that the applicant used to visit the room of co-accused no. 2 - Priya, it was submitted that these circumstances cumulatively point to the guilt of the applicant.

8. I have carefully considered the report under Section 173 of the Code of Criminal Procedure, 1973 the documents annexed with it and the submissions canvassed across the bar. Evidently, the case rests on circumstantial evidence. The circumstances arrayed against the applicant are the pledging of the gold ornaments, taking part in the meetings wherein the conspiracy was allegedly hatched

and sharing the photograph of the deceased.

9. The first two circumstances, prima facie, appear to the contentious as the jeweller Hiralal had not known the applicant. It does not appear that TI parade was held to establish the identity of the applicant as one of the persons, who had accompanied accused no. 2 – Priya, whom the said witness had known from before.

10. The statement of the Ashish Chauhan is also required to be appreciated in the light of the fact that a number of customers would visit the hotel, on a given day, and no test identification parade was held to establish the identify of the applicant as one of those persons, who had visited the said hotel on the day the conspiracy was allegedly hatched.

11. That leaves, the circumstance of retrival of the photograph of the deceased from the mobile phone handset of accused no. 4 which was allegedly forwarded by the applicant.

12. It is trite, in a case based on circumstantial evidence the circumstances should be of a conclusive tendency and lead to no other inference than that of the guilt of the accused. The third circumstance arrayed against the applicant is prima facie compatible with the innocence of the applicant.

13. Evidently there was marital discord between the applicant and the deceased. However, on that count alone, an inference of

complicity in the alleged offences cannot be drawn. In any event, whether the circumstances arrayed against the applicant sustain her guilt, would be a matter for adjudication at the trial.

14. The applicant has been in custody since 1st August 2021. The Court is informed that charge has not yet been framed. It is unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise discretion in favour of the applicant.

15. Hence the following order.

:O R D E R:

(i) The application stands allowed.

(ii) The applicant be released on bail in C.R. No. 500 of 2021 registered with Narpoli Police Station, Thane for the offences punishable under Sections 120B, 302, 201, 182(A) and 114 read with Section 34 of Indian Penal Code, 1860 on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned trial Court.

(iii) The applicant shall mark his presence at Narpoli Police Station, Thane on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)