

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3453 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Krishnakumar Shivbahadur Singh ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Harekrishna Mishra, for the Applicant.
Mr. S. R. Aagarkar, APP for the State/Respondent.
PSI Bajrang Desai, Samta Nagar Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 17th JANUARY, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. By this application under Section 439 of the Code of Criminal Procedure, 1973 ("the Code") the applicant seeks to be enlarged on bail in CR No.1597 of 2020 registered with Malwani Police Station, Mumbai, for the offences punishable under Sections 120B, 302 and 201 read with 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. The gravamen indictment against the applicant and the co-accused is that Nandinikumari Thakur alias Nandini Pankaj Ray (the deceased) was the daughter-in-law of accused No.1 Kamalnarayan Laxmi Ray. Accused No.1 suspected the fidelity of the deceased. In pursuance of a

criminal conspiracy which the applicant and the co-accused allegedly had, the applicant and the co-accused killed the deceased and with a view to destroy the evidence they had thrown the body of the deceased in the sea.

4. The learned Counsel for the applicant, at the outset, submitted that accused No.1 Kamalnarayan Ray, the principal accused has been released on bail by this Court by an order dated 2nd August, 2022 in BA/2263/2021. Opining, *inter alia*, that the circumstances arrayed against the said accused No.1 *prima facie* did not appear to have incriminating tendency. Based on the said order, the learned Additional Sessions Judge by an order dated 16th December, 2022 has released Pradeepkumar Gupta on bail. The applicant thus deserves the same dispensation.

5. The learned APP contested the prayer for bail. It was submitted that the circumstances arrayed against the applicant have incriminating tendency.

6. This court while releasing accused No.1 on bail observed *inter alia* as under:

“9. The material compiled in the charge-sheet in form of several statements of the witnesses do not assign any role to the present applicant, though the charge-sheet allege that he was suspecting the character of his daughter-in-law and with the help of

the co-accused, he had done her to death and in order to destroy the evidence, had thrown her body in the sea. Not a single statement in the charge-sheet establish the said assertion. On the other hand, even the witnesses residing in the neighbourhood, do not refer to any quibble between her and her father-in-law. Merely because one circumstance in the charge-sheet that when his daughter went missing, the applicant left for his native place by taking a flight, which circumstance the learned A.P.P. is harping upon, shall not relieve the prosecution of it's burden to prove it's case beyond reasonable doubt. One circumstance in form of the conduct of the applicant post his daughter-in-law went missing, by itself cannot implicate him for the offence of murder. The prosecution has failed to attribute any motive to the applicant for eliminating the deceased by any material compiled in the charge-sheet."

7. Although accused No.1 Kamalnarayan Laxmi Ray allegedly had motive to eliminate the deceased, this Court was persuaded to exercise discretion in favour of accused No.1. Moreover, co-accused Pradeepkumar Gupta, who has been released on bail, appeared to be similar circumstanced. Thus, the claim for parity is justifiable.

8. In any event, the entire case is rests on circumstantial evidence. The applicant has been in custody since 30th December, 2020. Further detention of the applicant does not seem warranted. I am, therefore, impelled to release the applicant on bail.

9. Hence the following order:

: O R D E R :

(i) Application stands allowed.

- (ii) The applicant Krishnakumar Shivbahadur Singh be released on bail in CR No.1597 of 2020 registered with Malwani Police Station, Mumbai, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount and furnish cash security for the period of six weeks, to the satisfaction of the learned Magistrate.
- (iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer.
- (iv) The Applicant should not tamper with evidence.
- (v) The Applicant shall mark his attendance in the concerned police station on first Monday of every trimester between 2.00 p.m. to 4.00 p.m. till framing of charge
- (vi) The applicant 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 applicant and

the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]