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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 3514 OF 2023

Akbar Kadamu Goriya

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Gaurav Bhawnani a/w Shahabuddin Shaikh for the applicant.
Smt. M.H. Mhatre, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE :21st MARCH, 2024

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 49 of 2020 registered at Arnala Sagari Police Station, Palghar, on 12/02/2020 under sections 302 and 201 of the Indian Penal Code.

2. Heard Mr. Bhawnani, learned counsel for the Applicant and Ms. Mhatre, learned APP for the Respondent-State.

3. This is the second time the Applicant has approached this Court for his release on bail. The Applicant was arrested on

15/02/2020. He had earlier preferred Bail Application No. 1187 of 2020. The co-ordinate Bench of this Court (Coram: Nitin W. Sambre, J.) , by his order dated 07/10/201, had rejected that application. However, specific liberty was granted to the Applicant to approach this Court again in case investigation against the co-accused Afrin was completed.

4. Learned counsel for the Applicant submitted that since then, till today, the co-accused Afrin is not arrested and therefore there is no progress in that particular direction. Therefore, he is invoking that liberty to make this application for his release on bail.

5. The prosecution story is that the deceased Pradeep Rai was staying in a rented room at Global City, Virar (West). On 12/02/2020, his friends were looking for him as he could not be contacted for more than a day. In the afternoon, at around 1.15 p.m., two police men and friends of the deceased came there. They were taken to room no. 902 where the deceased was staying. The

door was opened with the keys provided by the watchman. It was found that the deceased was hanging in that room. His both legs and hands were tied. The prosecution case is that the Applicant and the co-accused Afrin were seen entering that building at 1.47 p.m. on 11/02/2020. They were inside the building for about two to three minutes and then they had returned. The prosecution case is that during that time, they committed murder of the deceased and hanged his body to mislead as if he had committed suicide.

6. The allegations are that the absconding accused Afrin and the deceased were in a relationship. However, the co-accused was drifting away from the deceased and was getting close to the present Applicant. Therefore, there used to be quarrel between the deceased and the Applicant and as a result of that quarrel, the co-accused Afrin and the present Applicant committed murder of the deceased by strangulation. According to the prosecution case, this was done within those two-three minutes in the afternoon on 11/02/2020. The co-accused Afrin is still absconding. The

Applicant was arrested on 15/02/2020. He is still in custody for more than four years. There is no progress in the trial, even the charges are not yet framed. The investigating agency is still in the process of trying to apprehend the co-accused Afrin. Thus, at this stage, it appears that the Applicant is in jail with no immediate prospect of the trial commencing and concluding within a reasonable period.

7. I have considered the Applicant's bail application on merits as well as on the ground that he is an under trial prisoner without any prospect of commencing the trial in the immediate future. Learned counsel for the Applicant submitted that the charge-sheet contains the chats between the deceased and Afrin, in which there is a reference to a photo of suicide note, which the deceased had sent to Afrin on 10/02/2020 at about 10.57 p.m. According to learned counsel for the Applicant, the suicide note is important because whoever had committed murder of the deceased; had used the phone of the deceased to send the forged suicide note, from his phone to the phone of Afrin. In that case,

the theory that his murder was committed on the next day i.e. on 11/02/2020 at about 1.45 p.m. will not stand. He further submitted that there is absolutely no evidence against the present Applicant. The case is based particularly on circumstantial evidence and the only circumstance brought out against the Applicant is about his 3 minutes presence in the building on 11/02/2020.

8. Learned APP submitted that after going through the entire charge-sheet, she could not rely on any particular document which can be termed as a strong circumstance against the present Applicant.

9. I have considered these submissions. The Applicant is in custody for more than four years. The circumstantial evidence against the Applicant is very thin. There is substance in the submissions of the learned counsel for the Applicant. He further pointed out that, in the night of 10/02/2020, when the messages were sent from phone of the deceased at around 10.47 p.m., the

Applicant was at least 10 to 15 km. away from that spot, which can be verified from the CDR of his mobile phone.

9. Considering all these submissions made by learned counsel for the Applicant, I am of the opinion that the Applicant has made out a case for grant of bail to the Applicant during pendency of the trial. Hence, the following order.

ORDER

- (I) In connection with C.R.No. 49 of 2020 registered at Arnala Sagari Police Station, Palghar, the Applicant is directed to be released on bail on his executing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall co-operate with early disposal of the trial.
- (iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)