

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3585 OF 2023

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Karan Birbal Bahadur

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Harshad Meshram, for the Applicant.

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

Mr. Mengal, PSI, Aare police station, Mumbai.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 25 2024

P.C.:

1. The applicant, who is arraigned in C.R. No. 298 of 2020 registered with Aare police station for the offences punishable under sections 120-B, 363, 302 and 201 of Indian Penal Code, 1860, seeks to be enlarged on bail.

2. Munnadevi Yadav, the first informant lodged a missing report on 12th July, 2020 to the effect that on 10th July, 2020 at about 7.00 pm when she returned home, she inquired with her daughter Gauri as to where her son (the deceased) had gone. She informed that the deceased had told her that he was to go with the applicant. As the deceased did not return, the first informant inquired with the applicant. The applicant replied that the deceased had not accompanied him. Since, the deceased used to stay over for a day or

two with his friends, the first informant did not immediately report the matter to police. However, as the deceased did not return by 11th July, 2020 the first informant lodged the report.

3. On 17th July, 2020 Shekhar Kandgula, a security guard employed with MTDC, found a decomposed body of a person lying in the forest. Investigation commenced. During the course of investigation, it transpired that the deceased was seen in the company of the applicant.

4. The applicant came to be arrested on 18th July, 2020. During the course of interrogation, the applicant made disclosure statement leading to the recovery of the clothes and the knife with which the applicant had allegedly killed the deceased. CCTV footages indicated that the deceased was in the company of the applicant on the day he went missing.

5. Mr. Meshram, the learned counsel for the applicant, submitted that the entire case rests on circumstantial evidence. Apart from the fact that the applicant is a neighbour of the deceased, there is no other circumstance, which can be said to have any incriminating tendency. Since highly decomposed body of the

deceased was recovered on 17th July, 2020, after about eight days of the deceased having left the home, even if it is assumed that the applicant and the deceased were seen together at about 7.00 pm on 10th July, 2020, the said last seen circumstance cannot be pressed into service on account of the huge interval of time. It was further submitted that since the alleged recovery of the articles of the deceased was made from a place open and accessible to all, the said recovery can not fastened to the applicant.

6. The learned APP on the other hand, banked upon the CCTV footages which indicate that the applicant and the deceased were found entering into the forest at about 7.08 pm and the applicant alone returned at about 7.23 pm and thereafter left in an auto rickshaw at about 7.24 pm. It was submitted that the CCTV footages squarely establish the fact that the applicant and the deceased together entered the forest at 7.08 pm and the deceased did not return. The recovery of the said auto rickshaw as well as the clothes and the weapon, with which the applicant allegedly killed the deceased, according to the learned APP, prima facie establishes the complicity of the accused.

7. I have carefully perused the material on record and

considered the submissions canvassed across the bar.

8. Prima facie, it appears that the applicant was named in the missing report itself as the person with whom the deceased had gone on 10th July, 2020 at about 5.00 pm. The CCTV footages indicate that at about 7.06 pm, the deceased entered into the forest. The applicant followed him at 7.08 pm. At about 7.23 pm, the applicant alone returned from the forest and went away in an auto rickshaw at about 7.24 pm. Thus, there is prima facie material to show that within a span of 20 minutes, the deceased was seen in the company of the applicant and did not come out of the forest. If in the context of these CCTV footages, the discovery allegedly made by the applicant leading to recovery of the clothes of the deceased and the weapon of offence is considered, cumulatively, a prima facie case can be said to have been made out.

9. The Court can not lose sight of the fact that the deceased was the neighbour of the applicant. There is material to show that the deceased had stated that he will go with the applicant and was also seen in the company of the applicant on the day of occurrence. Since the body of the deceased was found in a forest area, the delay in discovery of the body and ascertaining of the exact time of death

as the dead body was found in a highly decomposed state, at this stage, cannot be pressed into service to urge that there was an interval of time between the last seen and the recovery of the dead body of the deceased.

10. In my view, this is not a fit case to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] 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.

(N. J. JAMADAR, J.)