

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3757 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.04.17
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Chandan Ramikwal Paswan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Sandeep Satkar, for the Applicant.

Ms. Supriya Kak, APP for the State/Respondent No.1.

API S. G. Hattekar, Kasarwadavli Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 15th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in CR No.229 of 2020 registered with Kasarwadavli Police Station, Thane, for the offences punishable under Sections 302, 364 and 201 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. Akshay (the deceased) was the son of the first informant. On 3rd September, 2020 at about 7.30 am. Akshay left his home to attend *Ganesh aarti* at the house of his maternal uncle Rohidas Tare. He did not return. Therefore on 4th September, 2020, the first informant lodged a report.

It transpired that the deceased was seen in the company of Dhanraj (A1). Upon being confronted, Dhanraj (A1) gave evasive replies. During the course of investigation, it transpired that on 4th September, 2020, Dhanraj (A1) had hired the services of Santosh Dalvi's auto-rickshaw and carried a gunny bag, which was kept behind the temple of HareKrishna and thrown the same in the Vasai creek. Dhanraj (A1) came to be apprehended.

4. During the course of investigation, it further transpired that as the deceased was wearing a 40 gram gold chain, Dhanraj (A1) had lured him to come behind Harekrishna temple on the pretext of consuming liquor. In furtherance of common intention, Dhanraj (A1) had strangled the deceased by means of a rope. Krishna Ghodke (A2), who was the relative of the deceased, and the applicant (A3), a close friend of Dhanraj (A1), had caught hold of the deceased while Dhanraj (A1) strangled the deceased.

5. The learned Counsel for the applicant submitted that apart from the statement of a witness Premkumar Markam there is no other material to connect the applicant with the alleged offence. Premkumar Markam has stated that the applicant had made an extra-judicial confession before the

said witness. Dhanraj (A1) used to frequently call the said witness to have word with the applicant as the latter was not having a mobile phone. It was submitted that there is no other circumstance to establish the nexus between the applicant and Dhanraj (A1).

6. As against this, the learned APP opposed the prayer for bail. It was submitted that the statement of Premkumar Markam squarely incriminates the applicant. Attention of the Court was invited to the CDR which shows that Dhanraj (A1) had called the said witness on a number of occasions during the period 1st September, 2020 to 3rd September, 2020.

7. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with It. PM Report indicates that the cause of death was asphyxia with ligature mark around the neck. Evidently, the authorship of this homicidal death is sought to be established on the basis of circumstantial evidence. Qua the applicant, the only circumstance appears to be the alleged extra-judicial confession made by the applicant. Further support is sought to be drawn from the CDR. *Prima facie*, the CDR appears to be compatible with the innocence of the applicant, as Dhanraj (A1) had allegedly made 216 calls to the

witness, before whom the applicant made the extra-judicial confession, during the period 1st September, 2020 to 3rd September, 2020. The number of calls belies the prosecution version that occasionally Dhanraj (A1) used to call the said witness to have a word with the applicant. Extra-judicial confession is considered to be a weak kind of evidence. If there are other circumstances which incriminate the accused, the Court can take into account the extra-judicial confession as an additional circumstance to lend assurance. *Prima facie*, qua the applicant, extra-judicial confession appears to be the only circumstance. It is not the case that the applicant was seen in the company of the deceased. Nor anything has been recovered at the instance of the applicant. *Prima facie* it does not appear that the applicant had any motive.

8. In the aforesaid view of the matter and having regard to the fact that the applicant has been in custody since 10th September, 2020, further detention of the applicant appears unwarranted. I am, therefore, persuaded to exercise discretion in favour of the applicant.

9. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.229 of 2020 registered with Kasarwadavli Police Station, Thane, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at Kasarwadavli Police Station on the first Monday of every alternate month between 10.00 am. to 1.00 pm. for a period of two years or till the conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, 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.

- (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 disposed.

[N. J. JAMADAR, J.]