

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1482 OF 2024

Hitesh Shantilal Jain ... Applicant
Vs.
State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION (ST.) NO.20196 OF 2024
IN
BAIL APPLICATION NO.1482 OF 2024

Mr. Satish Maneshinde a/w. Ms. Namita Maneshinde, Mr. Deepak Thakkar, Mr. Nikhil Maneshinde and Ms. Anandini Fernandes for Applicant in BA/1482/2024.

Ms. Rutuja A. Ambekar, APP for Respondent-State in BA/1482/2024.

Mr. Sudeep Pasbola, Senior Advocate a/w. Mr. Ayush Pasbola, Mr. Pranav Gole, Mr. Rajan Gurnani and Mr. Shubham Gharbudave for Informant / Applicant in IAST/20196/2024 in BA/1482/2024.

CORAM : MANISH PITALE, J.

Reserved on : 16TH OCTOBER, 2024

Pronounced on: 24TH OCTOBER, 2024

ORDER:

1. The applicant herein is one of the two accused persons. He was arrested on 01.12.2022 in connection with FIR No.1211 of 2022 registered with Santacruz Police Station, Mumbai, for offences under Sections 302, 328 and 120-B of the Indian Penal Code, 1860 (IPC). It was later on transferred to DCB, CID Unit IX and re-numbered as FIR No.308 of 2022.

2. The co-accused person is the wife of the deceased and the allegation against the accused persons is that, they entered into a conspiracy to cause the death of the husband of the co-accused by poisoning him with *arsenic* and *thallium*. The case of the prosecution is

of circumstantial evidence.

3. The chronology of events, according to the prosecution, is that, in the year 2000, the co-accused got married to Kamalkant Shah i.e. the deceased. They have two children from the marriage. But, some issues arose between them, due to which, there was matrimonial discord.

4. On 02.05.2021, joint meeting of family members was held to sort out the differences between the two, but no settlement could be arrived at. It is alleged that in the meeting held on 02.05.2021, the applicant, who is said to be a childhood friend of the deceased, was present at the meeting and he spoke in support of the co-accused. It is also alleged that the applicant was having an affair with the co-accused. Both, the applicant as well as the co-accused being married, they had indulged in an extra-marital affair. In fact, this is indicative of the element of motive on the part of the accused persons to do away with the deceased.

5. In the course of further such meetings of the family, it was indicated that the co-accused desired to live separately and accordingly, the brother of the co-accused arranged a house in Vile Parle (East), where she started residing with her daughter. On 26.10.2021, she came to the matrimonial house with some of her relatives and took away jewellery and *Streedhan*. Thereafter, in May 2022, a further attempt was made for an amicable settlement and in that context, the co-accused returned to the matrimonial house on the condition that she would reside separately from the deceased and that he would not interfere in her day-to-day life, and further certain monthly maintenance amount was to be paid to her. Accordingly, in June 2022, the co-accused returned to her matrimonial home with her daughter. But, there were frequent quarrels between the co-accused and the deceased. It is alleged that during this period, the co-accused would keep the cook of the house busy in errands and she herself took up the work in the kitchen.

6. On 29.07.2022, the mother-in-law of the co-accused was admitted to the hospital in Andheri as she had started vomiting and she had loose motions. On 02.08.2022, the mother-in-law was shifted to Kokilaben Hospital, where her condition did not improve and on 13.08.2022, she died.

7. On 14.08.2022, the deceased also started experiencing pain in the abdomen while at work. He returned home and consulted a doctor at Dadar. On 27.08.2022, he was admitted to Criticare Hospital. On 03.09.2022, he was shifted to Bombay Hospital. On 13.09.2022, the treating doctor advised a heavy metal blood test to be conducted on the deceased. A report dated 16.09.2022 showed abnormally high level of *arsenic* and a report dated 17.09.2022 further showed abnormally high level of *thallium* in the blood of the deceased. On this basis, the hospital sent information to Azad Maidan Police Station, treating it as a medical legal case. On 19.09.2022, the husband of the co-accused i.e. Kamalkant Shah died. On 24.09.2022, the informant i.e. the sister of the deceased submitted a complaint with the Santacruz Police Station. On 29.09.2022, the ADR was sent from Azad Maidan Police Station to Santacruz Police Station. On 19.10.2022, investigation was transferred to DCB CID, Unit IX and eventually, on 01.12.2022, FIR No.1211 of 2022 was registered at Santacruz Police Station under the aforesaid provisions of the IPC. Subsequently, it was transferred to DCB CID, Unit IX and it was renumbered as FIR No.308 of 2022. The applicant along with the co-accused were arrested on 01.12.2022 and from 14.12.2022, they were remanded to judicial custody. Charge-sheet was filed on 23.02.2023. The bail application filed by the applicant was dismissed on 17.10.2023 by the Sessions Court. On 18.09.2024, the Sessions Court granted bail to the co-accused.

8. Mr. Maneshinde, learned counsel appearing for the applicant

submitted that this is a case of circumstantial evidence. He referred to the settled position of law in such cases, particularly elaborated in the judgement of the Supreme Court in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra*, **(1984) 4 SCC 116**. He submitted that in such cases, the circumstances forming the chain, as claimed by the prosecution, have to support the hypothesis of guilt of the accused persons and that each circumstance has to be proved beyond reasonable doubt. It was submitted that such cases are obviously difficult to prove for the prosecution, as there is no eye-witness or direct evidence to show the involvement of the accused persons. It was submitted that on the touchstone of the stringent test employed in such cases of circumstantial evidence, the prosecution in the present case has failed to show an unbroken chain of circumstances to prove the hypothesis of guilt of the accused, including the applicant. He submitted that the co-accused person has been already granted bail, which is a circumstance that this Court may take into consideration.

9. Thereafter, the learned counsel for the applicant referred to each circumstance projected by the prosecution as forming a chain, showing the guilt of the accused. He attacked each and every circumstance, as not being supported by sufficient material to even make out a *prima facie* case. He submitted that even if the documentary and the oral evidence collected during the course of investigation is to be accepted, the applicant cannot be connected with the death of the husband of the co-accused person. It was submitted that most of the circumstances were nothing but conjectures and hence the applicant has a strong case on merits to be enlarged on bail. It was further submitted that the applicant is a person well rooted in the society and he has no criminal background. He is not a flight-risk and therefore, this Court may consider enlarging him on bail as he undertakes to abide by conditions that may be imposed by this Court.

10. On the other hand, Ms. Ambekar, learned APP appearing for the respondent-State and Mr. Pasbola, learned senior counsel appearing for the first informant / intervenor vehemently opposed the present application. It was submitted that the material that has come on record during the course of investigation and filed along with the charge-sheet sufficiently makes out the circumstances that unmistakably lead to the accused persons, including the applicant, as being the persons responsible for the death of the husband of the co-accused. It was also submitted that the applicant and the co-accused person were having an extra-marital affair, which is clear from documents showing that they were spending nights together in hotels. The statements of the concerned persons of the hotels are also on record, apart from documentary material demonstrating the same. The applicant, in the aforesaid meeting for settlement of the matrimonial dispute, spoke out in favour of the co-accused and against the deceased, thereby indicating the fact that he had motive to conspire with the co-accused to do away with the deceased. Reference was made to the manner in which the poisonous material i.e. *arsenic* and *thallium* was procured by the applicant, which was administered by the co-accused to her husband, that eventually led to his death.

11. It was submitted that the material on record also indicated that the same *modus operandi* was adopted to cause the death of the mother of the deceased also, although facts came to light only when the treating doctor at Bombay Hospital directed heavy metal blood test of the deceased to be conducted during the course of treatment. The statements of the suppliers of the said poisonous material also indicate the direct involvement of the applicant, particularly in the backdrop of *Google* searches undertaken by him with regard to the effectiveness of the said poisonous material and the manner in which it was to be used for causing the death of an individual. It was submitted that at this stage,

such material was overwhelming and indicative of the involvement of the applicant in the conspiracy to cause the death of the husband of the co-accused. It was submitted that even if the tests contemplated in such cases of circumstantial evidence, including the law laid down by the Supreme Court in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** (*supra*) were to be applied, a strong *prima facie* case is made out against the applicant and he does not deserve any indulgence. It was submitted that the co-accused was granted bail by the Sessions Court, mainly on the ground of she being a woman and having two children. The said factor cannot inure to the benefit of the applicant. On this basis, it was submitted that the application deserved to be dismissed.

12. Although detailed submissions have been made on behalf of the applicant as well as the respondent-State, since this is a bail application, this Court is considering the material on record, in order to examine whether a *prima facie* case is made out against the applicant and the circumstances made out by the material on record link the applicant to the death of the husband of the co-accused.

13. There can be no doubt about the fact that in a case of circumstantial evidence, the burden on the prosecution is much more heavy, as the settled law laid down by the Supreme Court in a number of judgements, including judgement in the case of **Sharad Birdhichand Sarda Vs. State of Maharashtra** (*supra*) needs to be followed. But, at this stage, while considering the bail application, this Court is only required to conduct an enquiry to examine the material brought on record by the investigating authority to ascertain the merit of the case of the prosecution.

14. In cases of circumstantial evidence, motive assumes great significance. In the present case, it is alleged that the applicant along with the co-accused intended to do away with the deceased as the two of

them were having an extra-marital affair and the deceased could be said to be a stumbling block in their relationship. This Court finds that there are indeed circumstances made out from the material on record that are relevant in the context of the aforesaid motive attributed to the applicant and the co-accused. There is material to indicate that when meeting of family members was convened to find a solution to the matrimonial discord between the co-accused and the deceased, the applicant was present and he spoke in favour of the co-accused. The investigating authority has brought on record documents of at least two hotels where the applicant and the co-accused were spending nights. The statements of the witnesses concerned with the said two hotels also confirm the fact that the two of them were spending nights together in hotels, indicating that the two accused persons were having an affair outside marriage in the backdrop of the matrimonial discord between the co-accused and her husband. The prosecution has been able to gather sufficient material to indicate a strong *prima facie* case against the applicant, insofar as the motive is concerned. This Court is unable to agree with the submissions made on behalf of the applicant that such material, at worst, may be showing that the accused persons were having an extra-marital affair, but that in itself, cannot be considered as an intrinsic part of motive on the part of the applicant. In such cases, the material on record is to be appreciated in the context of the overall circumstances. Having done so, this Court is of the opinion that the prosecution indeed has made out a strong *prima facie* case as regards motive of the applicant to have conspired with the co-accused to cause the death of the deceased.

15. The other circumstances concern the actual *modus operandi* adopted in the present case to cause the death of the husband of the co-accused. The case of the prosecution is that, poisonous substances i.e. *arsenic* and *thallium* were administered to the deceased. It was done in such a manner that use of such poisonous material could either not be

detected or it would be detected at such a stage where its effect would already have achieved its ultimate result.

16. It was during the treatment of the deceased undertaken at the Bombay Hospital that the treating doctor decided on 13.09.2022 to conduct heavy metal blood test as the condition of the deceased was not improving despite treatment. The results came on 16.09.2022 and 17.09.2022, showing abnormally high levels of *arsenic* and *thallium*. But, immediately thereafter, on 19.09.2022, the husband of the co-accused i.e. Kamalkant Shah died. Upon the ADR being transferred and the subject FIR being registered at the behest of the sister of the deceased, the police swung into action. The investigation brought on record a number of documents and corresponding statements of witnesses, as also data from electronic devices.

17. The material on record, including statements of persons from whom *arsenic* and *thallium* were sourced, primarily indicate that such material was procured by the applicant. An attempt was made to explain that such material was required for the business of the applicant, who deals in plastics. But the statements of the persons from whom the material was sourced clearly indicate that it was for the first time that the applicant had procured such hazardous material. This has to be appreciated in the backdrop of the *Google* searches made by the applicant as is *prima facie* evident from the documents placed on record along with the charge-sheet. The aforesaid material shows that from July 2022 onwards, the applicant had made searches on the internet about slow acting poisons, as also searches specifically in the context of *arsenic* and *thallium*. The aforesaid material does create a strong case for the prosecution to claim that *arsenic* and *thallium* were procured by the applicant with the intention of using the same as poisonous material.

18. The intimacy of the applicant and the co-accused i.e. the wife of

the deceased is strongly made out, as noted hereinabove, and in that context, a strong *prima facie* case is made out by the prosecution to claim that since the accused persons had the motive to do away with the deceased, the said poisonous material i.e. *arsenic* and *thallium* procured by the applicant was made available to the co-accused. At this stage itself, this Court cannot accept the contention raised on behalf of the applicant that the prosecution does not have enough evidence to show that the aforesaid poisonous material was actually handed over with details of such handing over to the co-accused. At this stage, the material placed on record does create a strong *prima facie* case against the accused persons of having procured and used the aforesaid poisonous material.

19. In this context, the statement of the servant / cook of the household of the deceased assumes significance. He has stated that after the co-accused had returned to the matrimonial house to attempt reconciliation on specific conditions, she started sending the said cook for various errands, thereby weaning him away from duties in the kitchen. There is strong material to indicate that during the relevant period, the co-accused took over the kitchen, as a consequence of which, food and water was given to the deceased by and under the direct supervision of the co-accused. Hence, the contention raised on behalf of the applicant that there is absolutely no material to show that the accused persons administered the aforesaid poisonous material to the deceased, cannot be accepted. In cases of circumstantial evidence, the Court has to look at the circumstances forming a chain supporting the hypothesis of guilt of the accused persons. In such cases, there is seldom direct or eye-witness evidence, but inferences have to be drawn from the material placed on record by the prosecution.

20. The conduct of the applicant and the co-accused, after the

deceased started showing symptoms and being admitted to Criticare Hospital, is also of relevance. There is material to indicate that when suggestions were made to shift the deceased to a better medical facility and a larger hospital, there was resistance on the part of the accused persons. Eventually, the deceased had to be shifted to Bombay Hospital. But, since poisoning by heavy metals could not have been suspected by the doctors as there was no history of that nature communicated to them, it took ten days of treatment at the Bombay Hospital for the treating doctor to eventually suggest a heavy metal blood test. By the time the results came, confirming abnormally high level of *arsenic* and *thallium*, it was too late and the husband of the co-accused expired on 19.09.2022. This Court is of the opinion that the elaborate material placed on record by the prosecution does make out a strong *prima facie* case against the applicant, indicating the motive that impelled him to conspire with the co-accused, in order to cause the death of the husband of the co-accused, for which purpose, he procured the poisonous material i.e. *arsenic* and *thallium*, which was administered to the deceased by the co-accused person i.e. his wife, eventually causing his death.

21. The attempt on the part of the learned counsel appearing for the applicant to pick holes in the prosecution case, at this stage, cannot be accepted. The submissions regarding mobile phone data or deficiencies in recovery of bottle containing *arsenic*, do not show that the prosecution case can be said to be unsustainable. The claim that the chain of circumstances has been snapped at various places is not acceptable in the light of the material brought on record by the prosecution, indicating a strong *prima facie* case against the applicant.

22. The co-accused being granted bail cannot inure to the benefit of the applicant, for the reason that bail was granted to her primarily on the basis that she is a woman with children. The said factors are not relevant

for the applicant. The State as well as the first respondent have filed applications for cancellation of bail granted to the co-accused and in the said applications, notices have been issued. The said applications shall be decided on their own merits. But, the applicant, in the present case, cannot claim any benefit on the basis of the order passed by the Sessions Court granting bail to the co-accused.

23. The prosecution has been able to bring on record sufficient material to demonstrate a strong *prima facie* case against the applicant of having conspired with the co-accused in a diabolical manner to commit the murder of the husband of the co-accused.

24. In view of the above, this Court finds no merit in the application and accordingly it is dismissed.

25. In view of the dismissal of the bail application, the interim application stands disposed of.

26. Needless to say the observations made in this order are limited to deciding the bail application. The trial Court shall proceed further in the matter without being influenced by the aforesaid observations.

(MANISH PITALE, J.)

Minal Parab