

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

CRIMINAL BAIL APPLICATION NO.1577 OF 2024

Sachin Subhash KadamApplicant

Versus

The State of MaharashtraRespondent

Mr. Aniket Nikam, Advocate i/b. Amit Icham for the Applicant.

Ms. Ranjana D. Humane, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th JUNE, 2024

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R. No.838/2018 registered with Loni Kalbhor police station, District-Pune on 2.11.2018 under Section 302 read with 34 of IPC. The Applicant was arrested on 3.11.2018 and since then he is in custody.

2. Heard Mr. Aniket Nikam, learned counsel for the Applicant and Ms. Ranjana Humane, learned APP for the Respondent-State.

3. Learned counsel for the Applicant states that except for recording of his plea while framing the charge in January, 2024, there is absolutely no progress in the trial.

4. The prosecution case is reflected in column No.16 of the charge-sheet. It is mentioned that the deceased Abhijeet Kalbhor was harassing the present Applicant. He had tried to take his vehicle on the person of the Applicant's niece. Abhijeet was threatening the Applicant and had bad intentions towards the Applicant's wife. Because of all this, the Applicant threw a stone on Abhijeet's head while he was sleeping and committed his murder. In this case, the FIR was lodged by one Meghraj Kalbhor who was the younger brother of Abhijeet. The FIR was lodged against unknown persons on 2.11.2018.

5. The Applicant was arrested on 3.11.2018. After his arrest, the statements of two eye witnesses, namely, Prakash Sharma and Sujata Kumbharkar were recorded on 4.11.2018. They claimed to be the eye witnesses to the actual act of the Applicant throwing a stone on the

deceased's head. The investigation was carried out. The charge-sheet was filed and as mentioned earlier there is no progress in the trial. In the meantime, co-accused Rohan @ Bhaiyya Anil Chavan was granted bail by this Court vide order dated 17.7.2019 passed in Bail Application No.1622/2019.

6. Learned counsel for the Applicant submitted that the evidence against the Applicant is weak. The eye witnesses are not reliable because their statements are recorded after the Applicant's arrest and they have not given sufficient explanation as to why they did not tell about their version to the police prior to that. There is no other corroborative piece of evidence in the form of any recovery. The charge-sheet does not contain the C.A. Report in respect of the clothes seized from the Applicant.

7. Learned counsel submitted that another circumstance of extra-judicial confession is also not reliable because there was no reason for either of the accused to give that extra-judicial confession to an unknown person.

8. Learned counsel for the Applicant submitted that during this period of five and half years, for some period of time the Applicant was on bail during COVID-19 pandemic.

9. Learned APP opposed these submissions. She relied heavily on the statements of the eye witnesses, who had allegedly seen the incident. However, she could not explain as to why the trial has not progressed beyond framing of the charge for a period of almost five and half years.

10. I have considered these submissions. The important evidence in this case would be the statements of the eye witnesses Prakash and Sujata. Both of them have given their statements on 4.11.2018. Prakash stated that on 2.11.2018 at about 12.30 p.m. he was going towards a temple on his motorcycle. On the way, he saw Sujata coming from the opposite direction. She was knowing Prakash. Therefore, he stopped the two-wheeler to have conversation with Sujata. That was around 1:00 p.m.. In the meantime, he saw accused Rohan Chavan and the present Applicant

were walking towards a small pond near a person who was sleeping there. The Applicant was having a big stone in his hand. He further saw that the Applicant threw that stone on the head of that person who was sleeping there. Even Sujata had seen that incident. Therefore, both of them left the spot. He further stated that he was scared and therefore he did not tell about this incident to anybody. He proceeded towards the temple. When he returned in the evening, he saw people gathered around the spot. He did not stop there. Subsequently, he came to know that there was murder committed at the spot. The dead body was of Abhijeet Kalbhor. He has further stated that the police made inquiries with him and thereafter he came to the police station and gave his statement. Exactly similar is the statement of the other alleged eye witness Sujata Kumbharkar.

11. From their statements, some doubt is created about the truthfulness. There is no explanation as to why they did not inform the police about the incident and as to

why the police made inquiries with them. However, at this stage it will not be appropriate to comment anything further on the quality of their statements because it will have to be decided at the stage of trial. At this stage, some doubt is created about their story, particularly when their statements were recorded after arrest of the Applicant.

12. There is nothing in the charge-sheet to show on what basis the Applicant was arrested on 3.11.2018. The charge-sheet does not indicate any of the motives attributed to the Applicant about harassment to his wife, to his niece or to himself. Thus, there appears to be some concoction in the prosecution story.

13. The other evidence of extra-judicial confession is also doubtful because there was no reason for either of the accused to approach the said witness Prabhakar and to confess about the crime.

14. Apart from that there is no other material against the Applicant. The Applicant is in custody for a long period without there being any possibility of the trial progressing

and concluding in the near future. In this background, the Applicant deserves to be released on bail. It is made clear that all these observations are made in this order only for the purpose of deciding bail application of the present Applicant in view of the fact that he is in custody for almost five and half years. The learned trial Judge at the appropriate stage, when the trial commences, shall not be influenced by these observations.

15. Hence, the following order:

ORDER

- (i) In connection with C.R. No.838/2018 registered with Loni Kalbhor police station, District-Pune, 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) Criminal Bail Application is disposed of accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2024.06.24
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(SARANG V. KOTWAL, J.)