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

BAIL APPLICATION NO. 2217 OF 2024

Munir Pathan ...Applicant
Versus
State of Maharashtra ...Respondent

Mr. Aditya Sharma, a/w Priya Maurya, for the Applicant.
Mrs. Mahalaxmi Ganapathy, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
Reserved On: 18th JULY, 2024
Pronounced On: 24th JULY 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.227 of 2023 registered with Chembur Police Station, Mumbai, for the offences punishable under Sections 120B, 302, 201, 328, 364, 346 and 347 of the Indian Penal Code, 1860 ("the Penal Code").
3. The indictment against the applicant, co-accused and absconding accused runs as under:

(a) Rohini Kamble, the mother of Vishal Kamble (the deceased), is the sister of Pradip Ramteke, the absconding accused. Vasant Kamble, the father of the deceased had retired as Deputy Commissioner of Police. Vasant Kamble

passed away in the month of October, 2021. Vasant Kamble had acquired a bungalow at Sindhi Society, Chembur, Mumbai. Vasant and Rohini Kamble also had properties at Kolhapur. Pradip Ramteke intended to usurp those properties.

4. The prosecution alleges Pradip Ramteke hatched a criminal conspiracy alongwith the applicant and co-accused to eliminate the deceased and Rohini Kamble. In pursuance of the said conspiracy, applicant (A2) called Vishal (the deceased) at hotel Nilkamal, Chembur, on the pretext of entering into a transaction for sale of the said property. When the deceased and Rohini Kamble came thereat, they were abducted and kept in a Villa at Panvel. Jyoti Waghmare (A1) administered sedative injuction to the deceased and Rohini. Jyoti Waghmare (A1), the applicant (A2), Raju Darvesh (A4) and Rohit Admane alias Mussa Parkar (A3), a cousin of the deceased, allegedly killed the deceased and dumped the body of the deceased in the State of Gujarat. Rohini Kamble was abducted and detained at various places in the State of Rajasthan and at Goregaon in Mumbai.

5. The prosecution alleges the applicant was the principal confederate in the conspiracy. It was the applicant, who had

lured the deceased and Rohini to come to Mumbai on the pretext of entering into a transaction for sale of the bungalow at Chembur. The investigation has revealed the complicity of the applicant.

6. Mr. Sharma, the learned Counsel for the applicant, submitted that the entire case rests on circumstantial evidence. The applicant has not been identified by any of the witnesses as the person, who played any role in the alleged occurrence. No Test Identification Parade was held. Nor there is any material to indicate that the applicant was in touch with the deceased. Even the electronic evidence in the form of CCTV footage does not indicate the presence of the applicant at the place where Rohini was allegedly wrongfully confined. The applicant has been roped in on the basis of mere suspicion. Therefore, the applicant deserves to be enlarged on bail.

7. Mrs. Ganapathy, the learned APP, stoutly resisted the prayer for bail. It was submitted that the applicant was the principal character in the conspiracy to kill the deceased with a view to usurp the property. There are statements of witnesses which indicate that the applicant was the person, who was instrumental in obtaining the flat on leave and

license basis. The car owner, in whose car the deceased and Rohini were abducted, has clearly stated about the involvement of the applicant. There are witnesses, who had seen Rohini, then 84 year lady, in the company of the applicant and co-accused. The applicant have also made discoveries leading to recovery of incriminating material. In the discoveries made by the co-accused as well, main role has been attributed to the applicant.

8. Apart from the statements of the witnesses recorded before the police, the learned APP laid emphasis on the statement of Rohini Kamble recorded under Section 164 of the Code of Criminal Procedure, 1908. In this backdrop, having regard to the gravity of the offences, the applicant does not deserve to be enlarged on bail, urged learned APP.

9. I have carefully perused the material on record including the statement of Rohini Kamble recorded under Section 164 of the Code. I have also given anxious consideration to the rival submissions canvassed across the bar.

10. To begin with, the statement of Rohini Kamble recorded under Section 164 of Cr.P.C. indicates that on 5th April 2023, she and the deceased were taken to a bungalow

at Panvel by a person who identified himself as Mr.Chopra. There were five men and two women at the said bungalow. The deceased was taken by those persons to the first floor. Out of two women, the first initially assaulted her. She was divested of her marriage string. Her mouth was gagged. A blindfold was tied over her eyes and an injection was given to her. Thereafter, she lost consciousness. When she regained consciousness, she found herself at an unknown place. On 2nd May 2023 she was rescued by Chembur Police.

11. Pursuant to the discovery made by co-accused Raju Darvesh, a human body in a highly decomposed state was recovered at a place near Sagbara Village, Vadodara-Ahmedabad Expressway. The DNA sampling revealed that DNA profile obtained from femur bone piece of unknown matched with one set of parental alleles present in Rohini Kamble (DNA-1224/2023) at all loci. Analysis concluded Rohini Kamble to be the biological mother of femur bone piece of unknown.

12. The thrust of the submission of Mr.Sharma was that there is no material to show that, the authorship of the

alleged offences can be attributed to the applicant.

13. Though the prosecution case primarily rests on circumstantial evidence, yet the material on record makes out a very strong *prima facie* case against the applicant. The applicant had made discovery leading to the recovery of the gold ornaments which Rohini Kamble was relieved in the alleged occurrence. Secondly, the applicant led police party to the owner of the Car in which the dead body of the deceased was carried and Rohini Kamble was abducted. The applicant also made discovery leading to the recovery of mobile phone handsets which were purchased by the applicant and the co-accused in pursuance of the criminal conspiracy. The panchnama of the CCTV footage indicates that the applicant was seen near the premises where the Rohini Kamble was wrongfully confined.

14. The statement of Sachin Bhangodi, whose car the applicant had taken on the pretext that they were to travel to Ajmer, *prima facie*, implicates the applicant. He had accompanied the applicant to Ajmer. Sachin Bhangodi stated that there were four to five persons alongwith the applicant at Sarwar Sharif near Ajmer. One of them was an

elderly lady. Upon being inquired, the applicant replied that those persons were to take care of the elderly lady. One of them was Jyoti.

15. Samir Shaikh, the estate broker informed that co-accused Saira had called him and apprised him that a room was required for Munir, a friend of her husband. Copy of Aadhar Card of the applicant and money were transferred, on Samir's mobile phone. Martin Samual, the owner of the Room No.515, Piccadilly-2, Royal Palms Estate, Aarey Colony, Goregaon (E), which was taken on rent and where Rohini Kamble was confined, stated that the said room was given on leave and license basis through estate broker Samir Shaikh and Munir Pathan was the licensee. A copy of the leave and license agreement purportedly executed by Munir Pathan forms part of the charge-sheet.

16. Babulal Hiraji Malmiya, the jeweller states that the applicant had came to his shop on 10th April 2023 and sold the gold chain and earring on the pretext that his mother was ill and he required money. There are statements of witnesses who have seen the applicant with co-accused

and Rohini Kamble.

17. If the aforesaid material is considered in conjunction with the electronic evidence in the form of the CDR, co-location details and the material collected during the course of investigation which reveals the role of the applicant as the main confederate in the conspiracy, in my view, a very strong prima facie case is made out against the applicant. To put it in other words, the involvement of the applicant is prima facie evident right from hatching the conspiracy, arranging mobile phones, vehicle and premises, leading the deceased and the Rohini Kamble to the Villa at Panvel and, thereafter, abducting the deceased and Rohini Kamble, eliminating the deceased and wrongfully confining Rohini Kamble after they returned from Ajmer.

18. In the backdrop of the gravity of the offences and aforesaid nature and potency of the material against the applicant, I am not inclined to exercise discretion in favour of the applicant. Hence, the following order:-

ORDER

- (i) Application stands rejected.
- (ii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed of.

[N. J. JAMADAR, J.]