

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

BAIL APPLICATION NO. 2622 OF 2024

Dashrath Prakash Kakade	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Dr. Uday P. Warunjikar a/w Sonali R. Chavan for the Applicant.
Ms. Megha S. Bajoria, APP for Respondent-State.

**CORAM: MANISH PITALE, J.
DATE : 19th JULY 2024**

P.C. :

. Heard learned counsel for the applicant and learned APP for respondent-State.

2. The applicant is seek bail, who was arrested on 18th April 2022, in connection with FIR No. 0355 of 2022 registered on same day with the Mumbra Police Station, Dist. Thane. Initially, the offence was registered under Section 363 of the Indian Penal Code, 1860 (IPC). Subsequently, on the charge-sheet being filed, the applicant is facing prosecution for offences under Sections 302, 363, 364 and 201 of the IPC.

3. The father of the deceased, a 13 years old child, is the informant. He approached the Police since the child had gone missing. It is stated that the applicant, who is related to the informant had taken the child with him for the ostensible reason

that the applicant was to buy clothes for a child about the same age, as the son of the informant. Thereafter, the child had gone missing.

4. Investigation was undertaken and the applicant was arrested. His statement was recorded on 19th April 2022, which led to execution of Memorandum under Section 27 of the Evidence Act, 1872, wherein the applicant stated that he had caused the death of the victim by throttling and that the body was hidden in a public toilet. The body was indeed recovered and thereupon, further offences were added. Charge-sheet was filed on 15th July 2022.

5. The learned counsel appearing for the applicant made the following submissions:

- (i) The FIR was initially registered against unknown person.
- (ii) The only material against the applicant is his own statement recorded in a custody of the police on 19th April 2024.
- (iii) The informant in his supplementary statement, recorded much later on 29th April 2022, has made substantial improvements.
- (iv) The only other material against the applicant is CCTV footage, which would be a matter of trial. It is submitted that even the said footage only indicates that the victim child was with the applicant on 17th April 2022 in the afternoon.

It is the case of the applicant that the child had indeed accompanied him, but the applicant had given him some money as the child wanted to go to a fair nearby.

- (v) In this situation, without any other material on record, the prosecution case cannot be said to be indicating the involvement of the applicant in the present case.

6. On the other hand, the learned APP made the following submissions:

- (i) Being a case of circumstantial evidence, aspects such as last seen together assume great significance.
- (ii) The CCTV footage and statements of witnesses clearly show that the victim child was last seen together with the applicant.
- (iii) The applicant throughout gave evasive responses when specifically asked about the whereabouts of the child.
- (iv) The CCTV footage indicates that the child was with the applicant. The CCTV footage also shows that the applicant was in the vicinity of the public toilet, where eventually, the body of the victim was found.
- (v) On this basis, it is submitted that the applicant ought to be dismissed.

7. This Court has considered the rival submissions. There is no eye-witness to the incident in the present case. In such a situation involving circumstantial evidence, last seen theory is crucial. The material on record, including the statements of the witnesses and reference to the CCTV footage shows that the child had indeed accompanied the applicant on the fateful day. In fact, it is not seriously disputed even by the applicant that the child did accompany him, although it is stated that the applicant had taken the victim child along with him, as the applicant was intended to buy clothes for another child about the same age as the victim. The material on record indicates that till the afternoon on 17th April 2022, the victim child was seen in the company of the applicant. Thereafter, CCTV footage appears to be indicating the presence of the applicant in the vicinity of the public toilet, where the body of the victim was eventually found. The recovery of the body is at the instance of the applicant.

8. Considering the aforesaid material and in the light of the fact that the applicant does not appear to have a plausible explanation, the prosecution has been able to make a *prima facie* case regarding involvement of the applicant in the death of the victim child.

9. Therefore, this Court finds no substance in the present application and accordingly, the application is dismissed.

10. However, since the charge-sheet has been filed as far back as

on 15th July 2022, the trial Court is directed to frame charges within six weeks from today and thereafter, take appropriate steps for expeditious completion of the trial.

MANISH PITALE, J.