



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (BA) NO.391/2024

Keshav Dilip Bhoyar

..VS..

State of Maharashtra, through PSO PS Kalmeshwar, District Nagpur

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri Aniruddha C.Jaltare, Counsel for the Applicant.
Shri C.A.Lokhande, Additional Public Prosecutor for the State.
Shri P.S.Tiwari, Counsel to Assist the Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 11/07/2024

PRONOUNCED ON : 18/07/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.264/2023 registered with the non-applicant/police station for offences punishable under Sections 302 and 120-B read with 34 of the Indian Penal Code.

2. The applicant came to be arrested on 16.4.2023 and since then he is in jail.

3. The crime is registered on the basis of report lodged by Sanjay Ruprao Thakre, who is brother of deceased Vijay. As per his report, he is residing along with his mother and elder brother, i.e.

deceased Vijay. Deceased Vijay was married with one Lata @ Megha. Deceased Vijay suspected that his wife is having love affairs with co-accused Sharad Thakre and, therefore, on that count, there used to be frequent quarrels between them. The wife of deceased Vijay left the matrimonial house with her children to live at her parental house. It is further alleged that deceased Vijay informed the complainant on 15.4.2023, at about 5:00 p.m. that his wife from last four days is calling him at her parents house and asking him to stay there for a day and, therefore, he has to go to the parental house of his wife. On this, the complainant along with one Arun Moze dropped deceased Vijay on his motorcycle at Piplafata at about 6:00 to 6:30 pm. On the next day, i.e. 16.4.2023, at about 8:00, the complainant came to know that dead body of deceased Vijay was found at Dhapewada, Bhadangi Road. Immediately, he rushed to the spot and witnessed injuries on the person of deceased Vijay. On the same day, he lodged the report with Kalmeshwar Police Station, Nagpur. The police registered the crime against the applicant and other co-accused.

4. Heard learned counsel Shri Aniruddha C.Jaltare for the applicant, learned Additional Public Prosecutor Shri C.A.Lokhande for the State, and learned counsel Shri P.S.Tiwari assisting the

prosecution.

5. Learned counsel for the applicant submitted that the entire case is based on circumstantial evidence. The prosecution mainly placed reliance on circumstances i.e. seizure of clothes of the applicant and vehicle at the instance of the applicant and CCTV Footage and CDRs. He submitted that as far as the seizure of clothes and the vehicle i.e. motorcycle are concerned, the same are seized from co-accused and no blood stains are found on both articles. He invited my attention to the CCTV Footage and submitted that certificate issued along with the CCTV Footage Panchanama shows that it is of dated 14.4.2023 of 5:55:30 to 6:6:12. He submitted that in the CCTV Footage, presence of the applicant, deceased Vijay, and co-accused appears to have been seen by the investigating agency. However, the said CCTV Footage is of dated 14.4.2023, but as per the prosecution, in fact, it is of 15.4.2023 and as per the said CCTV Footage, as per the prosecution, deceased Vijay was lastly seen in the company of the applicant and other co-accused. However, this fact is falsified by statements of witnesses namely Ajay Tale and Kavita Tale who stated that on 15.4.2023, at about 7.00 pm to 7.30 pm, they have seen deceased Vijay in temple of village Kanhaiyadol, taluka

Kalmeshwar, district Nagpur. He further submitted that at the relevant time deceased Vijay alone was seen and the applicant was not seen. Thereafter, deceased Vijay was not seen by anybody either with the applicant or other co-accused. CDRs also show that location of the applicant and the spot of the incident are at different places. Not only said statements of witnesses but also CDRs show location of the applicant at somewhere else and not at the spot of the incident. As such, considering facts, which are circumstantial evidence, on which the prosecution relied upon, it creates a doubt as to involvement of the applicant. Now, the investigation is completed and charge-sheet is filed. Further incarceration of the applicant is not required and, therefore, the applicant be released on bail.

6. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on ground that the CCTV Footage shows presence of the applicant and it is sufficient to show that deceased Vijay was lastly seen with the company of the applicant and. thereafter, he was found dead. He further submitted that witnesses Ajay Tale and Kavita, whose statements were recorded, are relatives of accused No.4 and, therefore, their statements are not material statements and that too they have given

false statements showing presence of deceased Vijay in the village. He further submitted that though CDRs show location different than location of the spot of the incident, it is a small place and it is not difficult for the accused to reach from one place to another. As such, considering connection of the applicant with the alleged offence, the application deserves to be rejected.

7. Learned counsel Shri PS.Tiwari for the complainant also endorsed the same contentions and submitted that the applicant has not mentioned that earlier application was withdrawn by the applicant and the trial was expedited. Thus, the applicant has not come with clean hands and, therefore, the application deserves to be rejected.

8. Having heard learned counsel for both parties and perused investigation papers, there is no dispute as to fact that deceased Vijay was found dead in the area of Dhapewada at road side and death of deceased Vijay was due to the strangulation. The entire case is rested on circumstantial evidence. As far as two circumstances, i.e. seizure of clothes and the vehicle at the instance of the co-accused, are concerned, no blood stains are shown in the said panchanama either on clothes of the applicant or on the vehicle. The material circumstance on which the prosecution relied

upon is the CCTV Footage. As per the certificate of the CCTV Footage, it was of dated 14.4.2023 between 5:55:30 to 6:6:12. Whereas, the statement of the complainant shows that he has dropped deceased Vijay at Piplafata at about 6:00 to 6:30 pm. The CCTV Footage further shows that it was the footage of 14.4.2023, so, if the same is considered, the alleged incident has occurred during the intervening night of 15.4.2023 and 16.4.2023. Admittedly, at this stage, evaluation of the evidence is not required. However, whether circumstances are sufficient to show the connection of the applicant and to raise *prima facie* material against the applicant, the same are to be referred to show that a *prima facie* case is made out against the applicant. Thereafter, statements of two witnesses recorded by the investigating agency during the investigation show that presence of deceased Vijay was seen by them on 15.4.2023 at about 7.00 to 7.30 pm in the village Kanhaiyadol in one temple. Even, accepting the contention of learned Additional Public Prosecutor for the State, that deceased Vijay was lastly seen in the company of the applicant and co-accused, there is also a long gap between lastly seen and finding of the dead body. The intervention of the third person cannot be ruled out.

9. After witnesses seeing deceased Vijay at about 7:00 to 7:30 pm in the village Kanhaiyadol in one temple, nobody has seen him in the company of the applicant or other co-accused. Thus, the evidence of last seen is also a weak piece of evidence.

10. The present application is opposed by complainant Sanjay Thakre on the ground that the applicant has suppressed a fact regarding withdrawal of the earlier application.

11. In the case of **Kulwant Singh vs. State of Punjab**, reported in 2022 SCC OnLine P&H 2399, by referring the decision in the case of **Arunima Baruah vs. Union of India**, reported in (2007)6 SCC 1201, it is held that the Honourable Apex Court discussed meaning and scope of expression 'material fact' and effect of suppression of the same. It was observed that a material fact would mean material for the purpose of determination of the *lis* and the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact which has been suppressed is not material for determination of the *lis* between the parties, the Court may not refuse to exercise its discretionary jurisdiction.

12. Here, in the present case, it has already been observed

that the evidence collected during the investigation is circumstantial in nature. The investigation is already completed and further incarceration of the applicant in jail is not required. Merely because the applicant has not disclosed the said fact, that by itself is not sufficient to keep him behind the bars. Merits of the matter is already discussed. At the most, considering the suppression of the fact by the applicant, it would be appropriate to impose costs on the applicant, as per order below:

ORDER

(1) The criminal application is **allowed**.

(2) Applicant Keshav Dilip Bhoyar, be released on bail, in connection with Crime No.264/2023 registered with the non-applicant/police station for offences punishable under Sections 302 and 120-B read with 34 of the Indian Penal Code, on his executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

(3) The applicant shall not enter village Bellori, taluka Kalmeshwar, district Nagpur, till conclusion of the trial.

(4) The applicant shall furnish his cell phone number(s) and residential address along with names of his two relatives and their

addresses with proof.

(5) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with facts of the present case.

(6) The applicant shall attend proceedings before the trial Court regularly without seeking any exemption, unless there are exceptional circumstances.

(7) It is directed that the applicant shall deposit costs Rs.10,000/- with the High Court Legal Services Sub Committee at Nagpur within a period of one month from today for suppressing the earlier order passed by this court. If the applicant fails to deposit the said costs within the stipulated period, learned Additional Sessions Judge, Nagpur to recover the costs.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!