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

BAIL APPLICATION NO.263 OF 2024

VAIBHAV
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Surajkumar Rambhuj Mourya

... Applicant

V/s.

The State of Maharashtra

... Respondent

Ms. Swatantri G. Waghmare for the applicant
(Appointed as Legal Aid Counsel).

Mr. Prasanna P. Malshe, APP for the State.

Mr. Tukaram Mengal, PSI, Aarey Police Station, Thane
is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 19, 2025

P.C.:

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973, wherein the applicant seeks bail in connection with Crime No.17 of 2023 registered at Aarey Police Station for the offence punishable under Section 302 of the Indian Penal Code, 1860, which relates to the alleged commission of murder.

2. The case of the prosecution, in brief, is that the deceased was allegedly in a romantic relationship with the present applicant. It is alleged that on the intervening night between 13th and 14th January 2021, the deceased and the applicant were consuming liquor together. The mother of the deceased claims to have seen

the applicant with the deceased at around 11:00 p.m. on that night. Further, the daughter of the deceased has stated that at around 7:00 a.m. the next morning, she saw the applicant and that he instructed her not to disclose his presence to anyone. Based on these statements and the recovery of an iron rod, which is alleged to be the weapon used in the offence, the prosecution claims to have made out a prima facie case under Section 302 IPC against the applicant.

3. Learned advocate appointed to appear on behalf of the applicant has submitted that although the learned Sessions Judge had recorded a statement on behalf of the State that trial shall be conducted on a day-to-day basis from 12th September 2023, there has been no substantial progress in the trial. The charges came to be framed on 9th January 2025. However, it is pointed out that for the last three dates, the applicant has not been produced before the trial Court. The learned advocate further submits that the prosecution case is entirely based on circumstantial evidence, namely – (i) the theory of ‘last seen together’; (ii) the recovery of an iron rod; and (iii) the presumption under Section 106 of the Indian Evidence Act, 1872, which places burden on the person who was last seen with the deceased to explain the circumstances.

4. On the other hand, learned APP has opposed the bail application and submitted that there is sufficient material on record to indicate involvement of the applicant in the offence. It is submitted that the evidence of the deceased’s daughter and mother, along with other material witnesses, clearly point to the applicant’s presence with the deceased and his conduct thereafter.

It is contended that the last seen theory, coupled with the statement of the daughter and the recovery of the iron rod at the instance of the applicant under Section 27 of the Indian Evidence Act, form a strong chain of circumstances establishing the applicant's involvement in the offence. The learned APP further submitted that the prosecution intends to examine 14 witnesses and that appropriate directions may be issued to the learned Sessions Judge to ensure expeditious trial.

5. Having considered the submissions advanced by both sides and after perusal of the charge-sheet, statements of witnesses, and other material placed on record, the following position emerges:

(i) It is not in dispute that the prosecution case is based on circumstantial evidence. The three major circumstances relied upon by the prosecution are: (a) the applicant being last seen with the deceased; (b) the recovery of an iron rod allegedly used in the offence, under Section 27 of the Indian Evidence Act; and (c) non-explanation under Section 106 of the Evidence Act regarding the circumstances leading to the death of the deceased, as the applicant was the last person seen with the deceased.

(ii) At this stage, it cannot be conclusively said whether these circumstances form a complete chain so as to rule out every other hypothesis except the guilt of the applicant. That determination would require full-fledged trial.

(iii) It is also to be noted that the incident in question occurred in January 2021, and though the applicant is

arrested much later, the charges were framed only in January 2025. The prosecution intends to examine 14 witnesses, but the trial has not commenced effectively. For the last three hearing dates, the applicant has not been produced before the trial court, resulting in further delay.

(iv) It is a well-settled position that while considering bail in a serious offence like Section 302 IPC, the gravity of the offence, the nature of evidence, and the possibility of tampering with evidence or influencing witnesses must be taken into account. However, prolonged incarceration, especially when trial is not progressing, is also a relevant factor under Article 21 of the Constitution of India, which guarantees the right to life and personal liberty.

(v) There is nothing on record to show that the applicant has attempted to threaten or influence any witness. There are also no antecedents reported against him. Further, the continued delay in trial cannot be attributed to the applicant alone.

6. In view of the overall facts, including the nature of evidence being circumstantial, the delay in trial despite directions for day-to-day hearing, and the applicant's incarceration, I am of the considered opinion that the applicant has made out a case for grant of bail. It is clarified that this is only a prima facie view for deciding the bail application, and the trial court shall not be influenced by any of the observations made herein.

7. Hence, the following order is passed:

- i. The applicant Surajkumar Rambhuj Mourya is directed to be released on bail in connection with Crime No.17 of 2023 registered with Aarey Police Station for offences punishable under Section 302 of the Indian Penal Code, 1860, upon furnishing cash sureties of Rs.25,000/- (Rupees Twenty Five Thousand Only) and thereafter executing a Personal Recognizance (P.R.) Bond in the like amount, within a period of eight weeks from the date of his release, subject to the following conditions:
- ii. The applicant shall not tamper with the evidence or attempt to influence any witnesses in any manner.
- iii. The applicant shall regularly remain present before the Trial Court on every date of hearing, unless prevented by sufficient and justifiable cause.
- iv. The applicant shall report to the Aarey Police Station on first Monday of every month between 10:00 a.m. to 12:00 noon until further orders.
- v. The applicant shall not leave the territorial jurisdiction of the concerned Trial Court without obtaining prior permission.
- vi. The applicant shall not, in any manner, contact the victim's family members, directly or indirectly.
- vii. The applicant shall not commit any offence or indulge in any criminal activity during the pendency of the trial.
- viii. The applicant shall not breach any condition during the

pendency of trial, failing which his bail is liable to be cancelled.

(AMIT BORKAR, J.)