

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1260 OF 2024

Prakash Mangilal Bishnoi

Applicant /
.. Accused No.3

Versus

The State of Maharashtra

.. Respondent

-
- Mr. Santosh M. Deshpande, Advocate for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent – State.
 - Mr. Yogesh Bendkule, API – Badlapur Police Station present.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 12, 2025.

P.C.:

1. Heard Mr. Deshpande, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.244 of 2022 registered with Badlapur Police Station for the offence punishable under Section 302 read with 34 of the Indian Penal Code, 1860 (for short '**IPC**').

3. Applicant is arraigned as Accused No.3 in the present crime. He is incarcerated since 09.12.2022. There are total 3 Accused in the case. Accused No.1 is Budharam M. Bishnoi; Accused No.2 is Dinesh H. Bishnoi whereas Accused No.3 is the present Applicant before me

namely Prakash M. Bishnoi. Name of the victim is Shravan Kumar who is distant relative of all Accused persons.

4. Case of the prosecution is that on the date of the incident i.e. 08.12.2022 at around 12:00 noon the Accused persons have been alleged to have committed the crime. Witness statement of the brother of the deceased is recorded on the date of the crime which is appended at page No.48 of the Application wherein he has stated that in the morning of 08.12.2022 after delivering the gas cylinder while on their way back the victim Shravan Kumar got down near their house and asked his brother to carry on and go to the Gas Agency and start loading the gas cylinders and informed him that he had some work and he would finish the work and meet him thereafter.

5. Since the victim did not report back to work his brother got worried and he repeatedly tried to contact him, but there was no answer on his mobile phone. His brother therefore came to their room near the house in the Society in which they were staying together on the ground floor. He found the door latched / bolted from the outside. He assumed that the victim had probably gone to the Gas Agency and he went there but to find that his brother has not reached there either. He then peeped from the window of the house on the ground floor and saw that his brother was lying on the bed with a *gamcha* cloth being strangulated around his neck and there were some burnt bamboo

sticks which were lying next to him on the ground.

6. He immediately alerted the Gas Agency Proprietor under whom his brother was working and one of his relative also alerted the police. They all came to the scene of crime and shifted the victim to the hospital where he was declared dead on admission. Cause of the death according to the postmortem report appended at page No.97 onwards of the Application is due to strangulation around the neck on the basis of a ligature mark seen on the neck. However the final cause of death is inconclusive as further investigation was yet to be completed.

7. The case of prosecution is based upon purely circumstantial evidence. Only case of prosecution for indictment of the Applicant is based upon the CCTV footage of the area/road near the said Society building. Witness statement states that on observing the CCTV footage he has seen the present Applicant proceeding on his motorcycle with the suitcase of his tools and equipment tied on his pillion and riding his two wheeler at around the same time when incident occurred.

8. In so far as the present Applicant is concerned, he has been seen to have passed on his motorcycle at around 12:15 hours (p.m.) towards Bombay NGO office on the road from Vadavali naka. The said CCTV footage however shows movement of Accused Nos.1 and 2 near the building of Prakash Society at the then time. That apart, one

dichotomy which has been noticed is that the CCTV footage collected by the prosecution is of a different area namely Vadavali naka for the same time which also shows the movement of the Applicant on his motorcycle on the road there.

9. Apart from the aforesaid, there is no other material placed on record to show complicity or involvement of the Applicant which is *prima facie* discernible from the material placed before the Court.

10. In so far as the role of Accused Nos.1 and 2 is concerned, it is clearly stated that as they are seen in the CCTV footage walking in and out of the Society building and gate which is appended at page Nos.54 and 55 of the Application, presence of the Applicant at the scene of crime is *prima facie* inconclusive which entitles him to be released on bail.

11. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in

the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

12. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

13. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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