

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2456 OF 2024

Parmeshwar Baburao Kokate

.. Applicant

Versus

The State Of Maharashtra

.. Respondent

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- Mr. Prashant Pandey a/w Mr. Dinesh Jadhvani, Ms. Ridhima Mangaonkar, Mr Pramod Sharma and Krishna Joshi i/b W3Legal LLP, Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for State.
- Mr. Sanjay Marathe, Sr. PI, Bandra Police Station.
- Mr. Manish Hajare, PSI, Dahisar Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2025

P. C.:

1. Heard Mr. Pandey, learned Advocate for Applicant and Mr. Karmakar, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 117 of 2022 registered with Dahisar Police Station for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860. Date of incident is 05.02.2022. Applicant is indicted for committing murder of deceased – victim initially by strangulating and throttling him by a flexible wire and thereafter attempting to destroy evidence by burning the body.

3. Record shows that Applicant and deceased – victim both were known to each other and had their establishments/shops for

earning their livelihood next to each other in Ramani Compound area situated at Dahisar. Applicant had a small unit for repair of Two Wheeler whereas victim deceased used to repair Air Conditioners. Their establishments were next to each other. Deceased – victim was also known to Applicant's family viz. wife who used to regularly send extra food in the Tiffin box sent to the Applicant since deceased victim used to live alone and eat outside.

3.1. On the date of incident witness statement of a neighbouring shop / establishment has been recorded wherein he has stated that at about 8:30 pm he had seen Applicant and deceased - victim leaving together to go out and returning after sometime. The time of egress was 08:30 pm whereas ingress was at about 09:15 pm, thereafter the incident occurred and Applicant is indicted on circumstantial evidence and more specifically on the last seen together theory.

3.2. According the Applicant's wife's statement, which is appended at Page No.179, she has stated that Applicant gave her a phone call and called her to meet him at a particular place and came to meet her and informed her that due to a quarrel which had taken place between him and the deceased – victim, he had apparently subjugated and killed the victim and he was very scared. Wife of Applicant has further stated that he along with Applicant came to the

victim's shop where the deceased – victim was lying on the ground and saw the victim.

3.3. There are two specific witness' statements recorded by the prosecution during the investigation which throw light on the incident. These witness' statements are appended at Page No. 168 and 171. Both the witnesses have stated that since 07:30 pm in the evening they heard Applicant and victim with each other, they left and returned back and were even talking loudly. According to them it was a normal feature since it was usual and occasional for them to quarrel or even talk loudly. One of the witness has stated that he apparently saw both Applicant and deceased – victim quarreling and they both were also drinking and were in an inebriated state in the deceased - victim's shop prior to the incident.

4. Case of the prosecution as put forth by Mr. Karmakar is that Applicant is indicted on two grounds. Firstly, to commit a crime and secondly to destroy the evidence and therefore Court should consider the brutality in which Applicant has gone about in committing the crime in question and reject his bail application.

5. I have perused the record of the case, witness' statements as also the material placed before the Court by the prosecution. There is no doubt that two specific witness' statements identify the Applicant

and deceased – victim going together inside the shop / garage just before the incident. Another witness called Taqdirulla Atimulla Gaddi has stated that because of the loud noise and squabble between the Applicant and deceased – victim he was awakened from sleep at about 10:45 pm and he therefore thought of checking on the Applicant and deceased – victim and when he came out of his shop where he was sleeping and peeped into the shop / garage, he saw the Applicant and deceased – victim squabbling with each other. Looking at their intoxicated condition he left it there and went back and retired in his shop.

5.1. Though Mr. Karmakar, learned APP would argue that considering the material placed on record which is gone unchallenged, there is additional evidence in the nature of photographs which have been recovered from the mobile phone of the Applicant, he having clicked the deceased - victim when they both were having the conversation / squabble and immediately after throttling him. He would also submit that there are some audio clips in the mobile phone of the Applicant which go to suggest that he was involved in crime.

5.2. *Prima facie* after considering the record, it is seen that evidence relied upon by the prosecution is purely circumstantial in nature. Applicant is indicted on the basis of last seen theory because of the statement of one of the witness who saw them squabbling

together. Applicant who is incarcerated since 05.02.2022 has completed almost 3 years in prison. He is having no antecedents. Neither the incident in question appears to be a premeditated plan. Even from the witness statements it is seen that at least 2 to 3 hours prior the incident both Applicant and deceased – victim who were friends and known to each other went out together and returned back together, they were consuming liquor inside the garage / shop which is the spot of incident and most importantly were quarreling with each other. The motive of crime is gathered from the witness statement at Page No.58 of one of the witness that Applicant and deceased - victim were quarreling over Rs.100/- between them.

6. Considering that investigation is completed and charge-sheet has been filed and considering the above observations *prima facie*, further incarceration of the Applicant is no more warranted. Needless to state that appropriate conditions can be imposed for allowing on bail.

7. Looking at the period of incarceration and the above observations Applicant is granted bail on 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 shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 am to 12:00 pm for the first three months and thereafter as and when called;
- (iii)** 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;
- (iv)** Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v)** Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vi)** Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii)** Any infraction of the above conditions shall entail cancellation of this order.

8. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case.

9. In view of the above directions, Bail Application stands allowed and disposed.

PR. Rajput

[MILIND N. JADHAV, J.]