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

BAIL APPLICATION NO.3265 OF 2024

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Shahbuddin Najrul Gaji

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Rajas Naik for the applicant.

Ms. Mahalaxmi Ganapathy, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2025

P.C.:

1. This is an application filed under Section 439 of the Criminal Procedure Code, 1973. The applicant is seeking regular bail in connection with Crime Register No.810 of 2023, registered at Santacruz Police Station, Mumbai, for an offence punishable under Section 302 of the Indian Penal Code, 1860.

2. The prosecution case, in brief, is that the deceased, one Mariyambibi, was residing with the applicant in a live-in relationship in a makeshift room made of tin sheets on the first floor of a construction site where both of them were working as labourers. On 18th September 2023, the applicant was paid wages of ₹12,000/- by the site manager. At about 6:00 p.m. on the same day, the watchman at the construction site saw the applicant leaving the premises with a bag. On the following day, i.e., 19th

September 2023, at around 2:00 p.m., the site manager found Mariyambibi lying unconscious and injured inside the tin-sheet room occupied by the applicant. She was immediately taken to Koopar Hospital, where she was declared dead on arrival. Based on these events, a First Information Report was registered and the applicant was arrested on 21st September 2023.

3. After the filing of the charge-sheet, the applicant had moved an application for bail before the learned Sessions Judge at Mumbai. The said application came to be rejected. Hence, the applicant has preferred the present bail application before this Court.

4. Learned advocate for the applicant submitted that there is no direct evidence connecting the applicant to the alleged act of murder, and that the entire case of the prosecution is built on circumstantial evidence. It was argued that the two primary circumstances relied upon by the prosecution are—first, the alleged motive of frequent quarrels between the applicant and the deceased, and second, the circumstance of the applicant being seen last at the construction site on the evening of 18th September 2023. It is submitted that the so-called motive, even if assumed to be true, is weak and not proximate to the cause of death. As regards the alleged last seen circumstance, the learned advocate submitted that it is based solely on the statement of the watchman, and the gap between the time the applicant was last seen and the time the body was found is not narrow enough to sustain the burden of a conclusive inference. It is further submitted that the applicant has been in custody since 21st September 2023 and,

therefore, in the absence of any direct or clinching circumstantial link, he deserves to be released on bail.

5. On the other hand, learned Additional Public Prosecutor strongly opposed the grant of bail. She drew my attention to the statements of the site manager, who confirmed payment of ₹12,000/- to the applicant on 18th September 2023, and of the watchman, who saw the applicant leaving the site with a bag on the same evening. She also referred to the statements of co-workers, who have spoken about frequent quarrels between the applicant and the deceased. It was further pointed out that the dead body of the deceased was found inside the room exclusively occupied by the applicant, and in these circumstances, the presumption under Section 106 of the Indian Evidence Act, 1872, would apply. Since the cause of death is within the special knowledge of the applicant and he has failed to offer any explanation, such silence supports the prosecution case at this stage. It is also submitted that the applicant was arrested from his native place in Odisha, and therefore there exists a risk of absconding if enlarged on bail. The learned APP, therefore, prayed for rejection of the application.

6. I have carefully perused the charge-sheet, including the statements of material witnesses and other documents placed on record. From a prima facie reading, it appears that the case of the prosecution against the applicant rests mainly on two circumstances—first, the alleged motive arising out of frequent quarrels between the applicant and the deceased; and second, the alleged "second last seen" theory based on the statement of the

watchman. At this stage, it does not appear that these two circumstances, even if assumed to be true, form a complete and unbroken chain of events that would conclusively point towards the guilt of the applicant and no one else. The law is well settled that in a case based on circumstantial evidence, all links in the chain must be so strong and consistent as to exclude every possible hypothesis except that of guilt. In my opinion, such a chain is not established at this stage of the proceedings.

7. Further, it is seen that the statement of the watchman indicates that the applicant was last seen leaving the construction site on the evening of 18th September 2023. In contrast, the body of the deceased was discovered only on the next day, i.e., 19th September 2023 at around 2:00 p.m., in the room where both resided. The post-mortem report produced on record does not mention the exact or even approximate time of death. In such circumstances, the benefit of doubt regarding the time of death and presence of the applicant at the relevant time would naturally go in favour of the applicant, at least at this stage. It is well recognized in law that the "last seen" theory must be tightly linked with the time of death; otherwise, it becomes a weak piece of evidence for continued detention during investigation or trial.

8. Considering the totality of the circumstances, and the fact that the applicant has been in custody since 21st September 2023, I am of the view that his further pre-trial detention is not necessary for the purpose of investigation or securing his presence at trial. There is no material shown to suggest that the applicant is likely to abscond or tamper with evidence if released on bail. Hence, the

applicant has made out a prima facie case for grant of bail.

9. In view of the above discussion, the applicant deserves to be enlarged on bail. Accordingly, the following order is passed:

10. The applicant is directed to be released on bail in Crime No.810 of 2023 registered with Santacruz Police Station for offence under Section 302 of the Indian Penal Code, upon furnishing a personal bond in the sum of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- a) The applicant shall not tamper with the prosecution evidence or attempt to influence any witness, directly or indirectly.
- b) The applicant shall attend the proceedings before the Trial Court on every date of hearing, unless exempted by sufficient cause to be recorded by the Court.
- c) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- d) The applicant shall not indulge in any criminal activity during the pendency of the trial.
- e) The applicant shall report to the Santacruz Police Station on the first Monday of every month between 10:00 a.m. and 12:00 noon, until further orders.

11. The bail application is accordingly disposed of in the aforesaid terms.

(AMIT BORKAR, J.)