

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

**INTERIM APPLICATION NO. 3778 OF 2024
IN
CRIMINAL APPEAL NO. 1028 OF 2024**

Vishal @ Ganesh @ Ganya Vishnu Kadam	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Amit Singh a/w. Hitesh A. Phulwani for Applicant.
Smt. M. M. Deshmukh, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 24 JANUARY 2025

PC :

1. The Applicant is seeking bail pending his Appeal. The Applicant was the sole accused in Sessions Case No.92 of 2018 before the Additional Sessions Judge-1, Kalyan. The Applicant was convicted for commission of the offence punishable Under sections 302 and 201 of the I.P.C. He was sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- and in default to suffer R.I. for one year, for the offence U/s.302 of the I.P.C. For the offence U/s.201 of the I.P.C. he was sentenced to suffer R.I. for five years

and to pay a fine of Rs.5000/- and in default to suffer S.I. for six months.

2. The prosecution case is that, the applicant was in an extra marital relations with the deceased 'K'. He was already married with children. The applicant was a rickshaw driver and used to take the deceased to her work place. The deceased had left her house on 16.11.2017 and thereafter she was not found. Her dead body was discovered by some boys playing cricket on 19.11.2017 at about 4.30p.m., near a playground. Her dead body was identified and then the offence was registered and investigated. The applicant was arrested on 21.11.2017 and since then he is in custody.

3. Learned counsel for the applicant submitted that the case is based purely on circumstantial evidence. The only evidence against the applicant is the 'last seen theory' and recovery of a mobile phone. He submitted that, both these circumstances are weak pieces of evidence. Besides that, the alleged blood stains found on his pant were of inconclusive nature, therefore, the

evidence against the applicant is very weak.

4. Learned APP submitted that, PW-7 Kunal is son of the deceased. He has narrated about the relationship between the applicant and the accused. She submitted that, there is evidence of three witnesses who had last seen the applicant with the deceased. They have also identified the applicant in the test identification parade. She submitted that, it was for the applicant to have explained the fact which was within his exclusive knowledge. She relied on the recovery of mobile phone to connect the applicant with the offence.

5. We have considered these submissions. The 'last seen theory' is deposed by PW-3 Dipesh Rasal. He was knowing the deceased. On 16.11.2017, he had seen the deceased with the applicant at 6:30p.m. His statement was recorded on 28.11.2017. He had identified the applicant in the test identification parade.

In the cross-examination, he has deposed that he was called by the police before 28.11.2017 and he had given his statement. He is not clear as to on which date his statement was

recorded and as to why he had not given his statement earlier.

6. PW-8 Rupali Jadhav was friend of the deceased. She has deposed that, at around 8:00p.m. on 16.11.2017 she had seen the deceased going in a rickshaw. She was knowing the rickshaw driver. She identified him in the test identification parade. However, in the cross-examination, she deposed that when she identified the applicant in the test identification parade, she did not remember how many dummies stood in the parade. She further added that, when she identified the appellant, the police officers were present. Therefore, the test identification parade becomes doubtful.

7. PW-11 Chetan Patole was son of the deceased. He has stated that the deceased had left her house at around 8:00a.m. with the applicant.

8. Thus, the evidence of PW-3 and PW-8 suffers from some infirmities. In any case, there is a long gap between the time when these witnesses had seen the deceased in the company of the Applicant, and when the dead body was found. The time gap is not

so small that the prosecution can be said to have ruled out the possibility that anybody else could have committed the offence. The postmortem notes show that the deceased had died because of the crush injuries to her head and on her ribs. A stone was found near the dead body itself. There is another circumstance of recovery of mobile phone which was identified by PW-7 Kunal, son of the deceased, in the Court. That recovery was effected from one Bablu. According to the prosecution case, the applicant had given that mobile phone to PW-20 Ashish on 20.11.2017. The applicant wanted to sell it. PW-20 Ashish then gave that mobile phone to one Bablu Singh. However, the prosecution has not examined said witness Bablu Singh. The mobile phone was taken in possession from Bablu Singh by the police. There is no specific number of the phone matching with the earlier record. Similarly, the identification of the mobile phone by the deceased's son PW-11 Chetan is also not very much clear.

9. Considering this discussion, it appears that the evidence against the applicant is not very strong. Therefore, he is entitled to be released on bail during pendency of his Appeal.

10. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.1028 of 2024, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Application is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)