

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1463 OF 2025

Rayan Stephan Joseph Bracko	.. Applicant
Versus	
State of Maharashtra	.. Respondent

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- Mr. S.K. Kamble a/w Ms. Manisha Jadhav for Applicant
 - Ms. Shilpa K. Gajare-Dhumal, APP for Respondent - State
 - Mr. Mangesh Burhade, API, Kashmirira Police Station
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2025

P. C.:

1. Heard Mr. Kamble, learned Advocate for Applicant and Ms. Gajare-Dhumal, APP for Respondent - State.

2. Applicant - accused has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with C.R. No. 359/2022 registered with Kashmirira Police Station for the offences punishable under Sections 302 and 309 r/w 34 of the Indian Penal Code, 1860 (for short, "**IPC**"). Applicant was arrested on 18.07.2022 and as on today he has been in incarceration for the period of 2 years 9 months and 5 days.

3. Applicant and his wife are arraigned as accused Nos. 1 and 2 having been indicted in a crime for committing murder of their 7 year old daughter. The facts in the present case present a very sad picture.

The same requires consideration in light of the situational crisis that arose due to the Covid-19 pandemic which is stated to be the underlying cause leading to the occurrence of the incident in question. According to the prosecution case during / immediately after the Covid-19 pandemic, Applicant and his wife (accused No. 2) and their 7 year old daughter checked into a hotel called 'Season Hotel' situated at Mira Road. They were residents of Vasai. What prompted them to check in the said hotel and what was on their mind was thought by them and left to their destiny. Prosecution case has unearthed that Applicant and his wife took such an extreme step out of sheer frustration due to the mounting financial burden and they both decided to end their lives by consuming poison and resultantly also decided to administer poison to their daughter. To what extent was the thought process of the Applicant and his wife in taking such an extreme step and implementing it is *prima facie* faced with a cloud of suspicion. Primarily because on the day of the incident i.e. on 30.05.2022, Applicant left the room of the hotel at 10.30 a.m. in the morning after informing his wife (accused No. 2) that he was going to arrange funds and money and he left thereafter. One and half hour later at 12.00 noon, the staff of the hotel heard some screams emanating from No. 212 where accused No. 2 and her daughter were inside but since the door was locked from inside, they were unable to

open the door. After a while screams subsided during which period the hotel staff called a key-maker and he made a duplicate key and opened the door upon which they found that the daughter was lying on the bed unconscious with blood oozing out of her mouth and accused No. 2 was also lying on the bed in a semiconscious state. They were taken to the hospital where the daughter was declared dead but accused No. 2 regained consciousness after being administered treatment and her statement was recorded. Present Applicant i.e. husband of accused No. 2 was arrested from Mira Road and also interrogated and his statement was also recorded. Both of them in their statements have stated that since they were debt ridden during the Covid-19 pandemic period and were unable to repay back the loans borrowed by them, hence they both determined and decided to commit suicide for which they had purchased certain toxic substances. Applicant and his wife (accused No. 2) were arrested on 18.07.2022. Accused No. 2 was granted bail by the Sessions Court on 23.01.2023.

4. Mr. Kamble, learned Advocate for Applicant would persuade me to consider that the facts in the present case were governed by a desperate situational crisis which pushed the accused persons to take such an extreme step. He would contend that in such facts, incarceration of Applicant for the past 2 years and 9 months be

considered by the Court for grant of bail for him on the ground of long incarceration and the ignominy suffered by Applicant since the trial would take a long time to be completed in view of the prosecution intending to examine 38 witnesses according to the chargesheet that is filed. That apart, he would draw my attention to the order dated 19.01.2024 passed by this Court which is appended at page Nos. 13-14 of the Application. Said order was passed on the previous Bail Application filed by Applicant which was withdrawn after arguing the matter by Advocate for Applicant on instructions at that time. This Court, however, directed that the trial be concluded expeditiously while granting liberty to Applicant to move a fresh Application after a reasonable period in case if there is no substantial progress in the trial.

5. Having read the above order and on ascertaining the status of the trial in the present case when charge is not framed till date , I am inclined to accept the submissions made by Mr. Kamble and consider the Application for bail.

6. Ms. Gajare-Dhumal, learned APP has addressed the Court and in her usual fairness she has submitted that it is an unfortunate circumstance that accused persons have lost their daughter. She would submit that role of Applicant being parents is to ensure and take care of their children while growing, developing and prospering but here is an unfortunate case where in the peculiar circumstances of

the present case, the accused persons with a common intention took away the life of their daughter and also decided to harm themselves. She would fairly submit that statement of the manager of the hotel is recorded by the prosecution and it would show that when the hotel room was opened by a duplicate key, accused No. 2 was lying in a semi-conscious condition and her daughter was lying in an injured condition with blood oozing out from her mouth. She would submit that prosecution has recorded several witness statements which *prima facie* show that Applicant and his wife were severely indebted and their financial condition was such that possibly it pushed them to take such an unfortunate step. However, she would submit that considering the nature of accusation against the Applicant, this Court may pass appropriate orders. The stand adopted by the learned APP while arguing the matter is appreciated by the Court in the facts of the present case.

7. With the able assistance of both the learned Advocates, I have perused the record of the case.

8. It is an unfortunate incident which has led to the death of a 7 year old girl but the facts emanating from the prosecution case are duly supported by the witness statements recorded by prosecution. Insofar as Applicant is concerned, witness statements show that on the date of the incident he had left the hotel room at 10.30 a.m. in the

morning of 30.05.2022 and when the hotel staff had gone for changing the bed covers at 12.00 noon, they had heard screams from inside the room presumably of the accused No. 2 and her daughter. Further it is emanating from the record that the duplicate key-maker was called by the hotel staff and by the time the duplicate key was prepared and the door was opened, it was almost 2.00 p.m. Insofar as the Applicant is concerned, it has come on record that he was found at Shanti Shopping Centre in Mira Road from where he was arrested and informed about what transpired in the hotel on that date. He in his statement has also echoed the statement recorded by the accused No. 2 i.e. his wife.

9. In view of the above peculiar facts in the present case and more specifically in view of the directions contained in the order dated 19.01.2024, the fact that charge in the present case is not framed and considering the role attributed to Applicant before me as also release of accused No. 2 on bail, Applicant has made out a case for grant of bail. Needless to state that complicity of Applicant in the crime can be proved by the prosecution in trial.

10. 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. 10,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs. 10,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs. 10,000/- 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 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.

11. 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.

12. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]