

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR SUCCESSIVE REGULAR BAIL - AFTER CHARGESHEET) NO. 18214 of 2024**

ISMAIL @ MALO HUSAIN MANJOTHI
Versus
STATE OF GUJARAT

Appearance:
MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
MS KRINA CALLA, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

Date : 29/11/2024

ORAL ORDER

1. This application under Section 439 of the Code of Criminal Procedure is filed for regular bail in connection with offence being C.R.No.I-49 of 2019 registered with Bhuj "B" Division Police Station, Kutch, Bhuj for offense under Sections 302, 201, 120(B), 34 and 177 of the Indian Penal Code and under Section 135 of the Gujarat Police Act. The application is filed pursuant to order dated 30.09.2021 passed by this Court in Criminal Misc. Application No.7639 of 2021, where the application was withdrawn with a liberty to file the a fresh in case trial does not commence satisfactorily within a period of six months

2. Learned Advocate for the applicant submitted that the applicant is aged 41 years and is in jail since 19.03.2019. It is submitted that the incident is alleged to have occurred on 09.06.2018, for which FIR came to be filed on 19.03.2019, i.e. after 9 months.



2.1 It is submitted that the entire case is based on circumstantial evidence and prima facie, there is no concrete material in the entire charge sheet to establish chain of circumstances against the applicant.

2.2 It is submitted that there are 81 witnesses cited in the charge sheet and as per the learned Advocate for the applicant, more than 15 witnesses are yet to be examined and therefore, trial is likely to consume still more time.

2.3 It is submitted that almost all accused persons are now enlarged on regular bail by this Court and by the Apex Court and hence, on the ground of parity also, case of the applicant deserves consideration.

3. As against this, learned Additional Public Prosecutor has objected to the application by submitting that it is not only a case of brutal murder of wife of the present applicant, but it is also case where the present applicant, with the assistance of other co-accused had successfully misled investigating agency and that the entire offence was not even detected for period of one year and the accused persons claimed as if they are unaware of the whereabouts of Rukhsana and for that reason they filed a missing complaint and also writ of Habeas corpus to misdirect the investigation.

3.1 It is submitted that on the basis of statement of the



witnesses, a direct nexus is drawn with the applicant. Not only that the FSL report has indicated the presence of bloodstain belonging to deceased-Ruksana found in the car used in the offence.

3.2 Learned Additional Public Prosecutor submitted that the trial is in progress and witnesses are being examined, at this stage discretion may not be exercised in favour of the applicant.

4. This is a case where the applicant along with the other co-accused have been charged with the offence of murder, wherein the deceased namely Rukshana, who is the wife of the present applicant has been murdered. The FIR in this connection has been registered on 19.03.2019, though the alleged offense had taken place on 09.06.2018.

5. The gist of charge against the accused persons is that the deceased in the present case, deceased-Rukshana and the present applicant had quarrels earlier, as the missing (deceased) Rukshana had got an offense registered against her husband-the present applicant, as her husband and wife were not in good terms with each other for a long time, as the accused husband had married another woman and the deceased Rukshana did not like that. The present applicant, along with other co-accused, hatched conspiracy from 01.06.2018 to 09.06.2018 to murder Rukshana. As



a part of their conspiracy, at about half past seven on 09.06.2018, the accused persons went to Rukshana's house in a blue colored car Baleno make and took her to Suralbhit Road in the car under pretext of taking her to Kasamsha Pir Dargah. At a secluded place near Suralbhit temple, the present applicant along with other co-accused persons, inflicted five to six blows, consecutively, to the deceased Rukshana on her neck and belly and caused her death and thus, committed an offense under Section 302, 120(B), 34 of I.P.C. and Section 135 of G.P. Act. First, they took the dead-body to an open plot, owned by the accused Javed Majothi, at Aisha Park, where the present applicant and co-accused-Javed had already dug a pit. With the help of the co-accused Sabbir and Altaf, they buried the dead-body in the pit and thus, committed an offense punishable under Section 201 of I.P.C. Further, with an intention of creating an impression that Rukshana is alive and with an intention of destroying the evidence, accused Sajid Daud Khalifa, at the instance of the accused Ismail Majothi and Javed Jusab Majothi, took the deceased Rukshana's mobile phone to Ahmedabad, where a phone call was made from Rukshana's mobile phone to her son Sohil's phone, wherein it was conveyed to him wrongfully that, Rukshana had fled with him. Thereafter, the mobile handset was thrown in a dustbin at Ahmedabad Railway Station and thus, destroyed the evidence. Further, the co-accused Sajid Daud Khalifa and Sayma w/o. Daud Khalifa, in collusion with each other,



went to Ajmer and rented a room at 'Hotel Ajmer Sharif' in name of Rukshana and for that purpose, they gave Rukshana's ID card as a proof. Further, Naziya, the second wife of the present applicant called up from another mobile number to the deceased Rukshana's daughter and her brother. Further, with an intention of creating a false evidence, the present applicant got a Missing Report registered with B-Division Police Station in this regard and tried to mislead the police and thereby committed an offense under Section 177 of I.P.C. Further, false information was presented before the High Court, got the Special Criminal Application No. 10295 of 2018 admitted and thus, misled the Court.

6. The role of the applicant is therefore, coming out very clear from the charge-sheet papers. The Court has taken into consideration certain statements of the witnesses, particularly the witnesses who have directly connected the applicant with the entire offence of murder has taken place in the car. Witness Arjun Kishorebhai Aajani, in his statement, dated 23.03.2019 has deposed to the effect that for some cooked up reason the applicant, accompanied by other co-accused had borrowed the Baleno car of this witness and thereafter, committed the offence.

7. This Court has also independently considered the role attributed to the co-accused, who are enlarged on regular bail. Firstly, the order of co-accused by the Co-ordinate Bench in



Criminal Misc. Application No. 13512 of 2019 in case of Sajid Dawoodbhai Khalifa. The role attributed to the applicant therein is use of mobile phone of the deceased to create a fake location of the deceased. The role attributed to co-accused Sabbirhussain Majothi is limited to destroying of evidence, thereby attracting Section 201 of IPC. Same is the observation of the Co-ordinate Bench in case of Mamad Osman Usman Kumbhar, who was enlarged on bail by order dated 19.06.2019 in Criminal Misc. Application No. 8478 of 2019. There also the role was restricted to destruction of evidence attracting section 201 of the IPC. In case of Anwar @ Anubha Lakha, this Court has observed that the role attributed to this accused of inflicting knife injury was based on the statement of the present applicant only and that in the antecedents cited against Anwar has resulted in acquittal. Whereas, the role attributed to the present applicant and with the supporting evidence of the witnesses clearly attributes a major role at par with the accused No.1-the husband of the deceased. From the statement of the independent witnesses, it is coming out that it is the applicant, who participated in the offence with other co-accused from the beginning, i.e to say from the stage of conspiracy and execution and thereafter, identifying the place for burring the deceased and after sometime changing the location of the dead body and burring it somewhere else. The strongest motive is against the present applicant whereas role of other co-accused is coming out only on

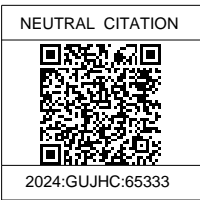


the basis of statement of the present applicant. The Apex Court, while granting bail to co-accused by order dated 08.7.2024, has only observed regarding incarceration of the applicant for more than three and half years, whereas the role of the present applicant is vital in commission of offence like murder of his wife. In view of the aforesaid discussion, the role of the applicant cannot be equated with the other accused persons, who have been enlarged on bail and therefore the principle of parity will not be applicable to the case of the applicant.

8. The relevant consideration for this Court not to exercise discretion in favour of the applicant additionally is active attempt made by the applicant to mislead the investigation by filing initially complaint for missing person and thereafter also filing a petition for habeas corpus before this Court despite the fact that remains of the dead body were dug out from the place which the applicant himself had identified.

9. It is reported that the trial is at the fag end and only five official witnesses are to be examined and therefore, it would not be prudent to enlarge the applicant on bail.

10. The Court has also perused order of the Sessions Court while rejecting bail application of the present application and finds that sufficient and cogent reasons are assigned for not granting



bail to the present applicant.

11. In view of the aforesaid, no case is made out for discretion in favour of the applicant. The application is hereby dismissed. Rule is discharged.

SHITOLE

(A.Y. KOGJE, J)