

Order below Exh.1 in Cri. Bail Application No.107/2022.

[Kishor Ramesh Gaikwad and others Vs. State]

The present application is moved by the applicants-accused No.1) Kishor Ramesh Gaikwad and 2) Hemant @ Ravindra Shankar Gaikwad for bail in connection with CR No.108/2021 registered with Kalwan Police Station for the offence under section 302 r.w.s.34 of the Indian Penal Code. It is alleged that, applicants-accused came to be arrested on 6.1.2022 and were produced before the learned Magistrate and were remanded to police custody till 11.1.2022 since then he is in MCR. The alleged incident of murder took place in between 16.11.2021 to 18.11.2021. The FIR came to be lodged on 19.11.2021. The name of deceased is Pravin Raosaheb Gavali, aged 18 years, R/o. Near Navadeo Mandir, Palekar Vasti, Varvandi, Tal. Deola, Dist. Nashik. The FIR is lodged by the father of the deceased named Raosaheb Gavali.

2. It is stated that this is first bail application since arrest of the applicants-accused. There is no legal evidence on record to connect the present applicants-accused to the murder. They are of 18 to 19 years old from Schedule Tribe community. Applicants-accused are taking education in the 11th Std. and accused No.2 is doing labour work. They have their landed property at Nandgaon, Tal.Malegaon, Dist. Nashik. They are local residents. They are not habitual offender. Hence, prayed to release them on bail.

3. Prosecution has opposed the bail application. I.O. is present and filed his report.

4. Perused record. Heard both the parties.

5. The learned counsel for applicants-accused has submitted that there is absolutely no evidence against the applicants-accused to connect present crime. They are of tender age youngsters and long terms detention will certainly affect adversely as they will come in contact with hard core criminals. Therefore, prayed to allow the application.

6. On the other hand, learned APP Shri. Suryvanshi submitted that the incident of the murder took place in between 16.11.2021 to 18.11.2021 as disclosed from the FIR lodged by the father of the deceased who has narrated that since 16.11.2021 the deceased went missing. He was searched by his family members with the relatives and other places, however, he could not be traced out. His mobile phone received switched off. Finally his dead body found at '*Saptshrungi Gad shivar, Umbar-zoti zara*' in forest area, Tal. Kalwan, Dist. Nashik. The deceased was found in a condition that his hands were tied from back side. His neck was strangulated. He appears to be sustained bleeding injuries to his chest.

7. I.O. has submitted that from the investigation so far there is strong connection of the present applicants-accused with the present crime. He has recorded the statement of witnesses, also seized mobile phones of applicants-accused. Investigation is at delicate stage. He has to investigate the matter with reference to the phone contacts of the deceased as well as applicants-accused with others. Therefore, prosecution has opposed the bail application.

8. I have carefully gone through the documents. The present incident as stated above, the deceased went missing since 16.11.2021 and his dead body was found in '*Saptshrungi Gad*

shivar', in forest area on 18.11.2021. From the scene of offence it can be gathered that he was brutally murdered as it was forest place and lonely area. Therefore, the task of the police is difficult, case appears to be based upon the circumstantial evidence. The police have recorded the statement of girl witness, who has mentioned the presence of the applicants-accused on Saptshrungi gad at the relevant time of incident including the deceased.

9. Thus, from the statement of this witness it appears that applicants-accused were last scene with the deceased and therefore, from this fact, I.O. has to investigate the matter on this point. I.O. has also submitted that he has received the details of phone a lady acquainted with this girl witness and he has to investigate the matter based upon the communication between the persons connected with the present incident. Therefore, from the above situation, case is made out by the prosecution so far as deciding present application, though it is based upon circumstantial evidence and theory of last scene. However, investigation is at delicate stage. I.O. has given opportunity to investigate matter.

10. So far as case laws in case of **Mohd. Shoaib @ Chutwa Vs State in Cri. Bail Appln No.2359/2021 decided on 18.1.2022**, wherein it is held that,

“Bail jurisprudence attempts to bridge the gap between the personal liberty of an accused and ensuring social security remains intact. It is the intricate balance between securing the personal liberty of an individual and ensuring that this liberty does not lead to an eventual disturbance of public order. It is egregious and against the principles enshrined in our Constitution to allow an accused to remain languishing behind bars during the pendency of the trial. Therefore, the Court, while deciding an application for grant of bail, must traverse this intricate path very carefully and thus take

multiple factors into consideration before arriving at a reasoned order whereby it grants or rejects bail”.

However, the fact of the present case are altogether different. At this stage case is not helpful to the applicants-accused. So far as tender age of the applicants is concerned the other side of coin is required to be considered as this stage. The murder has taken place as the applicants-accused have taken exception to the love relation of the deceased with a girl there is room to hold that and therefore, the accused might have committed murder of the deceased which is disclosed from the investigation done so far. Therefore, I am not inclined to grant anticipatory bail. Hence, following order.

ORDER

- i) Bail application No.107/2022 is hereby rejected.
- ii) Informed to all concerned accordingly.

Date- 05.02.2022

(M. A. Shinde)
Additional Sessions Judge-8,
Nashik.