

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO. 3904 OF 2015.

KULDIPSING S/O NAGUSING THAKUR.

VERSUS

THE STATE OF MAHARASHTRA.

Appearance =>

Mr. Shirish Gupte, Senior Counsel i/by Mr. Abhaykumar Ostwal, Advocate for the Applicant.

Mrs. S.G. Chincholkar, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 10th August, 2015.

Per Court :-

Present Criminal Application is filed by the Applicant for grant of regular bail in connection with CR No. 80/2015 registered with Police Station, M.I.D.C., Latur, District - Latur for the offences punishable under Section/s. 302, 364, 354, 376(2)(g), 201, 203, 120(B) read with 34 of the Indian Penal Code. (Sessions Case No.78 Of 2014 pending on the file of the learned Sessions Judge, Latur.)

[2] Heard Mr. Shirish Gupte, learned Senior Counsel for the Applicant and Mrs. S.G. Chincholkar, learned Additional Public Prosecutor for the Respondent – the State of Maharashtra.

[3] The sum and substance of the prosecution case is that, dead body of Kalpana Mangal Giri was found floating in a lake at Tuljapur, District – Osmanabad. Prior to that, missing report was lodged by Ganesh, brother of deceased Kalpana on 22nd March, 2014. First Information Report is lodged by Mangal Giri, father of deceased. First Information Report was lodged against unknown persons. After completion of investigation, Charge-Sheet is filed in the court of law.

[4] Principally, Mr. Shirish Gupte, learned Senior Counsel would submit that, the Applicant is entitled to be released on bail on the principal of parity. He submitted that, Accused No.3 – Prabhakar Jairam Shetty is released on bail by this court (Coram : M.T. Joshi, J.) vide order dated 29th September, 2014 passed in Criminal Application No.4551 Of 2014.

Further, he would state that, order releasing Prabhakar Jairam Shetty was questioned before the Hon'ble Apex Court by the State by filing Petition for Special Leave to Appeal (Criminal) No.5148/2015 however, the Hon'ble Apex Court on 13th July, 2015 has dismissed the said Petition filed by the State for granting bail in favour of Prabhakar.

[5] According to Mr. Shirish Gupte, learned Senior Counsel role attributed to Prabhakar Jairam Shetty and present Applicant is on the same footing. He further submitted that, case of Prabhakar and present Applicant is pari materia, therefore, he submits before this court that, this court to extend the benefit of parity in favour of present Applicant.

[6] Though Mrs. S.G. Chincholkar, learned Additional Public Prosecutor has vehemently opposed the application for bail, she submitted that the role of present Applicant and role Prabhakar Jairam Shetty (accused who is already released on bail), is identical.

Even according to the prosecution, the present Applicant steps into the prosecution case only after the dead body of Kalpana was retrieved from the lake. According to the prosecution, material against the present Applicant is the statement of one Vivekanand @ Vikki Pundlikrao Sarkale, Khandu Pandurang Magar and Ramchandra Baburao Gojewad.

[7] Khandu Magar and Ramchandra Godewad are the drivers. The statement of Khandu is pressed into service for bringing the present Applicant within the mischief of Section 120(B) of the Indian Penal Code however, his statement would reveal that, he has not heard anything. He only states that, in the office of Prabhakar Shetty, meeting took place between Prabhakar, Mahendrasingh – main accused and Vikramsingh Chauhan - father of Mahendra, who is also not released on bail and Kuldeep Thakur – present Applicant. Since statement of Khandu does not shows that, he is even remotely over heard in respect of anything, prima facie, at this stage, his statement is of no benefit to the prosecution.

[8] In so far as statement of Ramchandra Gojewad is concerned, it shows that, he is also driver and on 20th March, 2014 he was called by his Master – Prabhakar and accordingly, he reached near Sai Temple. There Prabhakar Shetty, present Applicant and Vikki

Sarkale (who is also known as Vivekanand) boarded the said motor vehicle. According to his statement, behind the driver seat, present Applicant, Prabhakar Shetty and Vikki Sarkale were sitting and that time, they were insisting Vikki that he should take the responsibility of commission of murder of Kalpana.

According to the statement of Ramchandra, no other role is attributed to the present Applicant. Role attributed by this witness to the present Applicant and Prabhakar is identical.

[9] After considering the role of Prabhakar Shetty as appearing in the prosecution case, this court was pleased to release him on bail on 29th September, 2014. Said order was questioned before the Hon'ble Apex Court. However, the Hon'ble Apex Court dismissed the Petition for Special Leave to Appeal (Criminal) No.5148/2015 filed on behalf of the State.

Further, Vivekanand @ Vikki Sarkale whose statement is also recorded and according to the prosecution, present Applicant tried to set up this matter to take blame on himself. In his statement, Prabhakar and present Applicant are on identical footing.

[10] Further it is pointed out by Mr. Shirish Gupte, learned Senior Counsel that trial is not progressed further. Even the Charge is not framed and this fact is also not disputed by the learned Additional Public Prosecutor.

[11] Looking to the fact that role attributed to the present Applicant and Prabhakar is identical and accused – Prabhakar is already released on bail, I see no reason as to why principle of parity should not be applicable to the present Applicant.

[12] Therefore, the applicant is also entitled to be released on bail, however, by imposing certain conditions. That leads me to pass the following order :-

ORDER

(i) Criminal Application is allowed.

(ii) Applicant - KULDIPSING S/O NAGUSING THAKUR shall be released on regular bail on he executing P.R. Bond of Rs. 100,000/- [Rs. One Lakh] with two solvent sureties in the like amount, in connection with CR No. 80/2015 registered with Police Station, M.I.D.C., Latur, District - Latur for the offences punishable under Section/s. 302, 364, 354, 376(2)(g), 201, 203, 120(B) read with 34 of the Indian Penal Code. (Sessions Case No.78 Of 2014 pending on the file of the learned Sessions Judge, Latur.)

(iii) Bail before trial court.

(iv) The Applicant shall surrender his Passport, if any, to the Investigating Officer, within a period of eight days from his release on bail.

(v) Applicant shall not enter within the territorial jurisdiction of Latur City till culmination of Sessions Case No.78 Of 2014 pending on the file of the learned Sessions Judge, Latur.

(vi) The Applicant shall be entitled to enter the limits of Latur City, only on the date when the trial of Sessions Case No.78/2014 is fixed.

(vii) As per the statement of Mr. Shirish Gupte, learned Senior Counsel, the Applicant shall resides at Renapur, District – Latur.

(viii) The Applicant is directed to intimate his residential address of Renapur, within a period of two days from his release to the Investigating Officer.

(ix) The Applicant shall communicate his Cell Number to the Investigating Officer.

(x) The Applicant is directed to attend Police Station, Renapur, District – Latur twice in a week, preferably on every Sunday and Tuesday, between 3.00 p.m. to 5.00 p.m, till the Charge is framed by the learned trial court.

(xi) After framing of Charge by the learned trial court, the Applicant is directed to attend Police Station, Renapur, District – Latur once in a fortnight, till culmination of trial of Sessions Case No.78/2014.

(xii) When the Applicant shall be visiting the Latur City to attend the court case, on that day, he is directed to attend the Police Station, Latur (City), District – Latur at 5.00 p.m.

(xiii) With this Criminal Application is allowed and same is disposed of, accordingly.

(V.M. DESHPANDE, J.)