

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5011/2014
IN
CRIMINAL APPEAL NO.572/2014

Sanjay s/o Dinkar Kakade,
age 23 yrs., occu.service,
now nil, r/o Medical Campus,
Ambajogai Tq.Ambajogai Dist.Beed.
...Applicant..

Versus

The State of Maharashtra.
...Respondent...

.....

Shri V.R. Dhorde, Advocate for applicant.
Shri S.G. Nandedkar, APP for respondent – State.

=====

CRIMINAL APPLICATION NO.4947/2014
IN
CRIMINAL APPEAL NO.563/2014

Mangesh s/o Pandurang Gund,
age 28 yrs., occu.Petty Trader,
r/o Medical Campus, Ambajogai.
Tq.Ambajogai, Dist.Beed.
...Applicant..

Versus

The State of Maharashtra,
through Police Station,
Ambajogai (City), Tq.Ambajogai
Dist.Beed.
...Respondent..

....

Shri P.K. Chavre, Advocate for applicant.
Shri S.G. Nandedkar, APP for respondent – State.

=====

.....

**CORAM: S.S. SHINDE &
A.M. BADAR, JJ.**

DATE: 09.01.2015

ORDER :

1] We have heard learned counsel for the applicants in both the applications and the learned APP for the State.

2] Learned counsel for the applicant in Criminal Application No.4947/2014 submits that during the trial, the applicant (accused no.6) was on bail. He further submits that the prosecution has not established motive against him. He is no way connected with the offence in question. He further submits that even if the evidence of the prosecution witnesses is taken in its entirety, the benefit of doubt should go to the applicant.

3] Learned counsel for the applicant in Criminal Application No.5011/2014 submits that the applicant's name was not mentioned in the FIR. It is only at the instance of co-accused, his name is added. He further

submits that the prosecution has not proved the motive against him. In case of circumstantial evidence, motive assumes importance. He further submits that though the prosecution has shown that there was alleged recovery of pant and shirt and the prosecution claims that blood stains were found on the clothes of the applicant, it is impossible that for two days when the applicant had an opportunity to change the clothes, he would continue to wear the said clothes. It is further submitted that even the blood, which was found on the said clothes, was of blood group "A". However, the blood group of the deceased was not determined. He further invited our attention to the statement of the applicant in defence and submits that in fact the applicant was called at Gangakhed and he was shown as arrested. Therefore, according to the learned counsel for the applicant, when the main accused Nandkumar is acquitted, with whom alleged transaction of the complainant was stated by the prosecution, the applicant also deserves to be given benefit of doubt. He further submits that there is no complete chain of circumstances so as to sustain the conviction on the basis of circumstantial evidence.

4] We have perused the notes of evidence. It appears that the applicants were last seen in the company of the deceased Ganesh on Pan Shop and hotel situated within SRTM Medical College. On that point, the prosecution witnesses have been examined. It further appears that after commission of offence, the accused Sanjay proceeded to Parli Vaijnath by motorcycle along with co-accused Swapnil and Mangesh. Then they went to Udgir by train and thereafter from Udgir to Nanded by Bus. They stayed at Ashirwad Lodge, Nanded, for a day and thereafter to various places. The prosecution has placed on record evidence on subsequent conduct of the accused after commission of the offence. The death was homicidal. Blood stained clothes of the accused Sanjay were recovered by the Investigating Officer. Upon perusal of the findings recorded by the trial Court, *prima facie*, it appears that the circumstances relied upon by the trial Court are in conformity with the evidence brought on record and prosecution has proved those circumstances. We do not wish to elaborate on the evidence since appeals are pending. In that view of the matter, in our opinion, no case is made out to grant bail to both the applicants.

5] Hence, both the criminal applications for bail stand rejected.

6] The Registry to send back the original record and proceedings to the Sessions Court, Ambajogai. Upon receipt of original record and proceedings, the Registry of the Sessions Court to prepare the paper book and send it along with the original record and proceedings to this Court within a period of three months from the receipt of the original record and proceedings. After receipt of the paper book along with original record and proceedings by the Registry of this Court, liberty to the learned counsel for the applicants / appellants to apply for early hearing of the criminal appeals.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)