

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.121 OF 2015

Akash @ Bala Kaushik Pawar

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.A.G. Lalla a/w Ms.Beerta H. Bajwa i/b Lalla & Lalla for Applicant

Mr.Arfa Sait, APP, for Respondent – State

Mr.Shriram Mullemvar, P.I., Kamothe Police station, Investigating Officer – present

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **MARCH 16, 2015**

P.C.:

1. This is a first bail application filed by the applicant/accused who is prosecuted for the offences punishable under sections 302, 341, 120B of the Indian Penal Code in C.R. No.I-139 of 2014 registered with the Kamothe police station, Navi Mumbai. The incident of murder has taken place on the night intervening 21/22.7.2014. One Ankush Mhaskar was assaulted brutally by unknown persons near the building where he was residing. On 30.7.2014, the applicant was arrested and he is in prison since then. Chargesheet is filed by the police. The learned Counsel for the applicant/accused has submitted that the case of the police against the applicant/accused is entirely based on the statement of the co-accused recorded under section 27 of the Evidence Act. The statements

of witnesses with whom he was working as a supervisor do not implicate the applicant/accused in any manner. The applicant/accused is innocent and has not committed any offence.

2. The learned Prosecutor has submitted that it is a case of contract killing. One Bhanudas Kolekar, who is one of the accused persons, wanted to take some revenge against the deceased and, therefore, Bhanudas Kolekar alongwith the present accused and the other accused hatched a conspiracy and finished the deceased before the deceased took any steps. The learned Prosecutor read over the statement of the co-accused which were recorded under section 27 of the Evidence Act wherein the accused have stated against the applicant/accused thereby involving him in the conspiracy and specifying his role in the conspiracy. He further submitted that a statement of the Builder/Employer of the applicant/accused i.e., Abhishekh Asarani is recorded by the police and he has stated that the applicant/accused was employed by him for a salary of Rs.8,000/- per month and he was working as a site supervisor. The learned Prosecutor submitted that as the applicant was working as a site supervisor, he was in possession of the suit site wherein the weapons i.e., the swords were found at the instance of the co-accused under section 27 of the Evidence Act. He also relied on a statement of one Mahesh Sahu, a Paanwala, who has stated that on the night at around 9pm, the

applicant/accused has come to his shop to buy a cigarette and the other person with him had called by name Lucky. The learned Prosecutor submitted that the nick name of the accused is Lucky. Therefore, the learned Prosecutor has submitted that this being a case of a contract killing, the role of the applicant/accused is specific and it is not a case for bail and hence, the application is to be rejected.

3. Perused the order passed by the learned Sessions Judge rejecting the application of the applicant/accused. On hearing the submissions of both the learned Counsel, it is found that prima facie, there is no admissible evidence against the applicant/accused. The statements which are relied on by the learned Prosecutor are all recorded under section 27 of the Evidence Act and the contents therein against the accused cannot be read in evidence and hence, cannot be looked into. The statements of Abhishekh Asarani so also the statement of Mahesh Sahu, the paanwala, prima facie do not show a sufficient evidence for which the bail can be denied to this accused. On hearing this, at this stage, the learned Prosecutor submitted that there is a criminal antecedent against the accused as he was prosecuted under section 326 of the Indian Penal Code.

4. In view of the above, the application is allowed on the following terms and conditions:

- i) The applicant/accused shall be released on bail, temporarily by way of cash bail of Rs.25,000/-. However, he shall furnish one or sureties in the like amount, within two weeks from the date of his release.
- ii) The applicant shall not tamper with the evidence;
- iii) The applicant shall not indulge into any kind of offence while on bail;

(MRS.MRIDULA BHATKAR, J.)