

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 864 OF 2015

1. Mr. Mohd. Shaukat Saba Shahid Ali Shaikh)
2. Mr. Azmat Saba Shahid Ali Shaikh).Applicants
vs. (Accused Nos. 2 & 3)
The State of Maharashtra ... Respondent

Mr.Mubin Solkar I/b. Ms. Tahera Qureshi, Advocate, for the applicants
Ms. Rutuja Ambekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 25th August, 2015.

P.C.

Heard. This is a subsequent application under Section 439 of Cr.P.C. The applicants herein are arrested on 16.3.2014 in Crime No.29 of 2014 registered at Konghaon Police Station for the offences punishable under Sections 302, 201, 498A read with Section 34 of IPC. The investigation is completed and charge sheet is filed on 12.6.2014.

2. The applicants herein had filed Criminal Bail Application No.1957 of 2014 which was rejected by this Court (Coram: S.S.Jadhav, J.) on 30.9.2014. This Court had observed in the said order that the dead body

of Tarunnum was discovered at the instance of the applicants. It is further observed that it is clear that the applicants were fully aware of the fact that Tarunnum had died homicidal death. It was also observed that their involvement in causing homicidal death and disappearance of evidence cannot be ruled out and therefore, the application was rejected.

3. The learned counsel for the applicants has drawn attention of this Court to the statement of Sania Saba who happens to be the niece of the present applicants and the daughter of the deceased and the principal accused namely Ashraf. In the course of investigation, her statement was recorded on 23.3.2014 in a question and answer form. She has disclosed to the police that at the time of incident, she was residing with her parents and her younger sister Saina in the house. She has also admitted that prior to the incident, they were all initially residing in a joint family. However, the present applicants are residing at Mumbra whereas the accused No.1 and the deceased were residing at Bhivandi. She has disclosed to the police that on the date of incident i.e. on 12.3.2014, her father had sent her and her younger sister to the tuition and thereafter he had locked the house, kept the keys with the neighbour and thereafter he had taken her mother on the motorcycle. That her father had returned home alone at about 10 p.m. She

had enquired with her father about her mother and he had informed his children that their mother has not returned home, but they should not be worried since he is there to look after them. She has disclosed that she kept on persistently asking her father about the whereabouts of her mother. At about 11.30 p.m., her father had called upon the present applicants. They had come to their house at about 12 midnight. All this would clearly show that the present applicants were not aware of the activities of their brother i.e. Ashraf, who is the original accused No.1. The averments in the first information report and the papers of investigation would reveal that the first informant had questioned the principal accused and the present applicants about the whereabouts of his daughter. They refused to answer. The complainant had taken them into confidence and assured that he would not inform anything to the police. At that juncture, they had told him that they would think over and then disclosed to him the whereabouts of his daughter. Accordingly on the next day, at the behest of Ashraf, all of them had been to Bypass Pipeline. It is true that the present applicants had also followed Ashraf along with the first informant and others. It was Ashraf who had shown the place where he had concealed the dead body of his wife. He had opened the gunny bags. The papers of investigation would

reveal that the persons had also learnt about the said place only after it was discovered at the instance of Ashraf. It can be safely inferred that the present applicants who happen to be the brothers of the principal accused Ashraf were in a moof to screen the offender and in all probabilities had the knowledge that Ashraf had caused homicidal death of Tarrunum.

4. The learned APP submits that the fact that Ashraf had used the motorcycle of the present applicant would be a clear indicator that the present applicant No.1 was fully aware that Ashraf is going to cause the homicidal death of his wife. He had taken the motorcycle for that purpose and therefore, according to the learned APP, the applicants deserve to be prosecuted with the aid of Section 34 of IPC.

5. As against this, the learned counsel for the applicants submits that the present applicant No.1 had two motorcycles. That he had given one motorcycle to his brother and it was with him much prior to the incident. The learned counsel for the applicant submits that the motorcycle which was used in the commission of the offence was bearing Registration No. MH-04-514. The present applicant No.1 is the owner of another motorcycl which is registered as MH-04-FY-0532. The proof of registration are produced at the time of hearing of this application. It shows

that the present applicant No.1 is the owner of the said motorcycle. In view of this, it cannot be denied that he had given the motorcycle to his brother for regular use. There is nothing on record to indicate that the accused No.1 had taken motor cycle from the applicant No.1 on the date of incident so as to attribute knowledge to the present applicant No.1.

6. Section 201 of IPC contemplates as under :

“201. Causing disappearance of evidence of offence, or giving false information to screen offender. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

***if a capital offence** – shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*

***if punishable with imprisonment for life** - and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*

if punishable with less than ten years' imprisonment – and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.”

From the papers of investigation, it can be safely inferred that the present applicants had gathered knowledge after the incident about the act of the original accused No.1 and only due to the blood relationship they had made attempts to screen the principal offender and hence prima facie, it can be said that the applicants herein would be liable to be punished for the offence punishable under Section 201 of IPC. The applicants have been in custody since 16.3.2014. They have almost undergone one year and 4 months till today. Hence, they deserve to be enlarged on bail.

7. The learned counsel for the applicants submits that the two principal accused who have assisted the accused No.1 in causing homicidal death of Tarunnum and are being prosecuted for the offence punishable under Section 302 of IPC have been enlarged on bail by the Sessions Court at Thane after the application of the present applicants was

rejected by this Court.

8. The learned APP submits, upon instructions from the complainant who is present in the Court and the police personnel from the concerned police station, that the State has filed an application seeking cancellation of bail of principal accused before the Sessions Court, Thane and the same is pending.

9. It is made clear that the observations made hereinabove are prima facie in nature and shall not be considered by the Sessions Court at the time of trial. The applicants have made out a prima facie case for grant of bail.

ORDER

(i) The application is allowed.

(ii) The applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iii) The applicants shall report to the concerned police station on first Sunday of each month till conclusion of trial. They shall also attend on each and every scheduled date at the trial.

(iv) The applicants shall not contact the complainant or any other

witness.

(v) The applicants shall not tamper with the evidence and shall not contact any witness.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)