

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1588 OF 2014

Jameer Ahmed Pathan. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Harshad Nimbalkar i/b. Mr. Sachin S. Thombare, advocate for
Applicant.

Mr. Arfan Sait, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 14, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 18/4/2014 in
Crime No. 384 of 2013 registered at Baramati City Police Station,
District Pune for offence punishable under Section 302, 201 of the

Indian Penal Code. Investigation is completed and charge-sheet is filed in May, 2014.

3 It is the case of the prosecution that on 14/12/2013 Sunita Yerunkar lodged a report at the police station alleging therein that her husband was working as a interior designer. He had taken job work of doing interior in the shop of one Shrenik Bhandari and Saurabh Bhandari at Baramati. Relations were cordial between her husband and Bhandari family. According to her, Mr. Bhandari had requested her husband to go to Zaveri Bazar, Mumbai and get gift items from Shilpi Jewellers. On 29th October, 2013 her husband had left the house to go to Zaveri Bazar to fetch the gift items. It appears that the gift items were subsequently found missing just before he had left for Baramati. On 30th October, 2013, her husband had approached Mr. Bhandari and informed him that gift items were missing. He had requested Mr. Bhandari to pay the dues for his work. Mr. Bhandari had also talked to the complainant on the cell phone and requested her to search for the gift articles. Thereafter, she had tried to contact

her husband on his cell phone. Cell phone was switched off. Thereafter, whereabouts of her husband were not known. She has also alleged that she had enquired with Mr. Bhandari on various occasions about her missing husband. However, he had abused her and verbally molested her. On 2/11/2013 she had lodged missing report. However, there was no progress. On the basis of her statement, Crime No. 384 of 2013 was registered against Mr. Bhandari and his son Saurabh Bhandari. Name of the applicant does not appear in the first information report.

4 In the course of investigation, statement of one Somnath Kothawale was recorded on 23/3/2014, in which he had stated that on 30th October, 2013 Mr. Bhandari had given him a cheque of Rs. One Lakh towards his own dues. It was a bearer cheque. He had requested Mr. Somnath Kothawale to withdraw the amount and pay him the remainder amount after deducting his dues. Mr. Kothawale had met Mr. Bhandari at about 7 p.m. and at that time, he had seen Mr. Bhandari on red colour bullet. Supplementary statement of Mr.

Kothawale was recorded on 16th April, 2014, in which he has stated that he had come across the news item in which it was revealed that interior decorator Sudhir Yerunkar was killed by Shrenik Bhandari. He recollected incident dated 30th October, 2013. He has then alleged that on 30th October, 2013 he had met Shrenik Bhandari in his car. At that time, the present applicant had accompanied Mr. Bhandari and there was one unknown person in the said vehicle and therefore, he had arrived at a conclusion that Mr. Bhandari had killed Sudhir Yerunkar with the help of the present applicant.

5 Besides this, the Investigating Officer had recorded statement of Rajaram Gaikwad, watchman of shop of Shrenik Bhandari. He had disclosed to the police that on 30th October, 2013 he had seen the present applicant leaving alongwith Shrenik Bhandari and the deceased.

6 The only incriminating evidence against the present applicant is the supplementary statement of Somnath Kothawale dated 16th April,

2014 and the statement of Rajaram Gaikwad dated 20th April, 2014 which show that the applicant had in all probabilities accompanied Shrenik Bhandari and Sudhir Yerunkar.

7 Learned APP vehemently submits that on 31st October, 2014 an unidentified dead body of male person was found in Naldurg. In the course of investigation, the said body was exhumed and post mortem was conducted on the said body. It was revealed that the said unidentified person died due to head injury. According to the learned APP, said deceased person was Sudhir Yerunkar. It is further submitted that the clothes of the unidentified person was preserved and was duly identified by the complainant and hence, according to the learned APP, the applicant had shared common intention with Shrenik Bhandari in causing homicidal death of Sudhir Yerunkar and attempted to dispose of the same at Naldurg.

8 It is further submitted by the learned APP that the applicant herein was admitted in Sancheti Hospital on 11/4/2014. His

statement was recorded by the police and in the said statement, he has admitted that on 30th October, 2013 he had accompanied Shrenik Bhandari and Sudhir Yerunkar. That there was a scuffle between Yerunkar and Shrenik Bhandari. That Shrenik Bhandari had assaulted him and at that time Shrenik Bhandari had given a blow on the chest of the deceased. He fell down on the stone and died. According to the learned APP, this evidence is sufficient to reject the application seeking bail.

9 Learned Counsel for the applicant has vehemently submitted that in any case, this is a statement made before the police and it is inadmissible in evidence. It is further stated that the said statement could be used against the accused only under Section 30 of the Indian Evidence Act at the time of trial and this is not a stage when the said statement can be considered by this Court. It is further submitted that the applicant happens to be a patient of heart decease and Kidney failure and therefore, he deserves grant of bail. It is further argued by the learned Counsel for the applicant that the

applicant had allegedly made a statement in the hospital and thereafter, just to create corroborative evidence, the Investigating Officer has recorded supplementary statement of Somnath Kothawale to show that the applicant was accompanying Shrenik Bhandari on 30th October, 2013.

10 It is a matter of record that 1st statement of Somnath Kothawale was recorded practically after four months of lodging of the first information report and his supplementary statement was recorded one month thereafter. The explanation given in the supplementary statement for not disclosing the said fact in the previous statement would not inspire confidence of the Court at this stage. However, taking into consideration the material against the present applicant and the submissions advanced across the bar, this Court is of the opinion that the applicant has made out a prima facie case for grant of bail.

11 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding application for quashing of FIR or for discharge. The Sessions Court shall not be influenced by the said observations at the time of trial, as the said observations pertain to deciding an application under Section 439 of the Code of Criminal Procedure, 1973.

12 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- and one or two sureties in the like amount.
- (iii) The applicant shall not tamper with the evidence.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)