

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2028 OF 2014

Akshay Suresh Hadavale ... Applicant
vs.
The State of Maharashtra ... Respondents

WITH
CRIMINAL BAIL APPLICATION NO. 2180 OF 2014

Dattatray Laxman Gunjal ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Satyam H. Nimbalkar a/w Mr. Onkar P. Ukarande for applicant in BA No.2028/2014.

Mr. Satyam H. Nimbalkar a/w Mr. Karim Khan Pathan for applicant in BA No.2180 of 2014.

Mr. Arfan Sait, APP, for the respondent-State.

Mr. C.D.Bhosale, Sr. P.I. Bhosari Police Station present.

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 15th January, 2015.

P.C.

Heard.

2. The applicants herein are arrested on 24.1.2014 in Crime No.27 of 2014 registered at Bhosari Police Station for the offence punishable under Section 302 read with Section 34 of IPC. The investigation is completed and charge-sheet is filed.

3. It is the case of prosecution that on 24.1.2014, Constable Vijay Telewar and Constable Mali had received a wireless message that one unidentified person is lying unconscious behind Rantara Colony, Sadguru Nagar, Bhosari. The police personnel had been to the spot and had found that the said person had sustained several injuries. A blood-stained sword was lying at the said dead body. The police personnel had rightly arrived at a conclusion that it was a case of homicidal death and, therefore, Vijay Telewar lodged a report at the police station against unknown persons for the offence punishable under Section 302 read with Section 34 of IPC.

4. In the course of investigation, it was revealed that in the previous evening on 23.1.2014, deceased Bhairav Desai was in the company of the present applicants and they had visited Hotel Sonali at Dehoo Road had consumed alcohol. It further appears that there was a brawl between the friends. The other friends had tried to pacify the quarrel and it appears that the quarrels were pacified. The Investigating Officer had recorded the statement of the father of deceased Bhairav wherein the father has disclosed that he had received a message on his cellphone in the midnight at 12.30 which showed that deceased Bhairav had withdrawn an amount of Rs.5,000/- from Canara Bank ATM. Needless to

hold that the deceased was alive at least till 12.30. The compilation of charge-sheet does not reveal that the investigating agency had made an enquiry at the ATM Counter. The Investigating Officer is present in the Court.

5. The learned APP, upon instructions, submits that the said ATM does not have a watchman. It is difficult to believe this contention. No doubt, Bhairav had died a homicidal death. The learned APP submits that there is evidence of last seen together in the form of the statement of the owner of the hotel, the waiter of the hotel and other friends who had accompanied the present applicants and Bhairav and had noticed that there was a brawl between the friends. The learned APP submits that the applicants had a strong motive to eliminate Bhairav as they were informed by their girl friends that Bhairav was indulging in eve-teasing the said girls. The I.O. recorded the statement of one girl, who had purportedly written a letter to the present applicants. The said girl has disclosed to the police that on 23.1.2014, the deceased had teased her and had tried to make advances at her at about 7 p.m. and at 7 p.m., he was under influence of alcohol. The said girl had not disclosed about it to the present applicants and, therefore, for the time being, it cannot be said that it was a strong motive to eliminate Bhairav. The case is of circumstantial evidence.

6. The learned counsel for the applicants has submitted that the original accused No.1 Sumit Pokharkar against whom there are similar allegations, has been enlarged on bail by the Addl. Sessions Judge, Pune, vide order dated 13.5.2014. The learned APP fairly submits that the said order has not been challenged. Hence, the grant of bail to Sumit Pokharkar has attained finality. The learned counsel for the applicants submits that by virtue of doctrine of parity, the present applicants would also be entitled to grant of bail.

7. Taking into consideration the papers of investigation the fact that the investigation is completed, the charge sheet is filed and the submissions advanced across the bar, this Court is of the opinion that the applicants herein have made out a prima facie case for grant of bail.

8. The observations made hereinabove are prima facie in nature and shall not be considered for the purpose of quashing of FIR or discharge application or at the time of trial.

ORDER

The applications are allowed. In the event of their arrest, the

applicants be enlarged on bail on each furnishing P.R. Bond in the sum of R.15,000/- with one or two sureties in the like amount.

Applications are allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)