

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.1126 of 2015****IN****CRIMINAL APPEAL NO. 499 OF 2014**

Chandrakant @ Chandu Mangal Patil ..Applicant.

versus

The State of Maharashtra ..Respondent.

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Mr. Shriish Gupte, Sr.Advocate i/by Mrs. Pooja N. Sejpal, Advocate
for the Applicant.

Smt. V.R. Bhosale, APP. for the State.

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CORAM : SMT V.K. TAHILRAMANI, Acting C.J.&
A.S. GADKARI, J.**8th October, 2015.****P.C. :**

Heard learned counsel for the applicant-original
accused No.4 Chandrakant @ Chandu Mangal Patil and the
learned A.P.P. for the State.

2) The applicant along with other accused has been
convicted under Section 302, 364, 201 read with 34 of the Indian
Penal Code. The applicant is now seeking bail.

3) It is the prosecution case that on 7.3. 2007 at about
3.00p.m. deceased Shantaram, P.W.No.3 Ashok and P.W.6
Mahesh were proceeding to Mumbai. When deceased Shantaram,
P.W.3-Ashok and P.W.6-Mahesh were proceeding towards

Karanjadi Railway Station to go to Mumbai, Tata Sumo came from the rear side. It over took the deceased and the witnesses. Two persons got down from the Tata Sumo. One of them i.e. original accused No.7 abused Shantaram. Then applicant caught hold of the collar of Shantaram and dragged him into the Tata Sumo vehicle. Both the persons threatened deceased-Shantaram, P.W.3-Ashok and P.W.6-Mahesh with dire consequences. They told P.W.3 and P.W.6 to run away from the spot. P.W.6 has specifically stated that applicant put Shantaram into the Tata Sumo. Both P.W.3 and 6 have identified the applicant in the Test Identification Parade and stated that he was one of the persons who got down from the vehicle and who took Shantaram away in the vehicle. It is pertinent to note that thereafter Shantaram was not seen alive and his dead body was found on 14.3.2007 in decomposed condition.

4) Learned counsel for the applicant submitted that the applicant was unknown to both P.W.3 and P.W.6, hence, Test Identification Parade was held by P.W.7 Shri. Nimbalkar. Learned counsel for the applicant submitted that there are various lacunas in holding the parade especially in making the selection of panch witnesses. In relation to selection of panchas, we have perused the evidence of P.W.7 Nimbalkar. Shri. Nimbalkar has

stated that he himself selected panchas. He was working as Naib Tahsildar at Mahad and he selected the panchas who had come to his office at that time. Only lacuna found is that he did not recollect whether he had asked the panch witnesses if they acted as panch witnesses in any police matter. It is not as if the police had brought the panch witnesses but the SEM had itself chosen the panch witnesses. In such case, at this stage, much capital could not be made out of this admission given by the SEM.

5) Thereafter, learned counsel for the applicant submitted that according to the Doctor i.e. P.W.10-Dr. Nair fracture found on the head of Shantaram could be an accidental or homicidal. Learned counsel for the applicant further pointed out that on external examination no injury was seen on the body of Shantaram which is admitted by the P.W.10-Dr. Nair. As far as this contention is concerned, the Post Mortem Report clearly shows that no external injury could be detected since decomposition was present all over the body. The medical evidence shows that Shantaram had sustained fracture on the left side temporal parietal region of the skull and the cause of death was due to head injury secondary to fracture of left temporal parietal skull bone.

6) At this stage, it may be stated that the Tata Sumo vehicle was recovered at the instance of accused No.1 and blood stains were found in the Tata Sumo. This further corroborates the prosecution story that injuries were caused to Shantaram in the Tata Sumo vehicle. As stated earlier, the evidence of P.W.3 and P.W.6 clearly shows that applicant was one of the two persons who dragged Shantaram into the Tata Sumo vehicle. Thereafter, Shantaram was not seen alive. Looking to the above facts, we do not think that this is a fit case to grant bail, therefore, application is rejected.

(A.S. GADKARI, J.)

(ACTING CHIEF JUSTICE)