

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2218 OF 2014

Ravi @ Vinod Vilas Kamble. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. B.A. Lawate, advocate for Applicant.

Mr. A.S. Shitole, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 4, 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
2/8/2013 in Crime No. 134 of 2013 registered at Baramati Taluka
Police Station for offence punishable under Section 302, 201, 404,
120B of the Indian Penal Code. The investigation is completed and
charge-sheet is filed on 18/10/2013.

3 It is the case of the prosecution that on 22/7/2013 police head constable Anurat Digambar Deshmukh, attached to Vairag Police Station lodged a report alleging therein that they have received an information that a dead body of an unidentified male lying in abandoned condition near Mauje Shripat Pimpri Shivar. He had been deputed to the spot. They had taken into custody of the dead body. Inquest panchanama was conducted. The body was sent for post mortem. Post mortem was conducted on 22/7/2013. The cause of death was asphyxia due to ligature strangulation alongwith subdural haemorrhage due to head injury. The autopsy note show that the death must have been occurred within 12 to 24 hours prior to conducting of the post mortem.

4 On 25/7/2013 the Investigating Officer recorded the statement of Rohidas Sitaram Kumbhar who disclosed to the police that on 19/7/2013 he had taken the vehicle to Pandharpur. At about 12.30 in the noon he had receive phone call from Mayur Deepak Andhale.

He was informed that he has to take the passenger on fare. In the evening at about 7 p.m. he had again received phone call from Mayur who had called him at Pencil Chowk, R.T.O. Office. He obliged Mayur and met him. At that time, Mayur was with Anil Khade, Suhas Kalkhaire and one unidentified person. They had taken vehicle to S.T. Stand. They had called somebody from public telephone booth. They had then taken vehicle to Choudhar vasti. The unidentified person was Vinod Kamble i.e. the present applicant. He was asked to wait at night alongwith Mayur. At about 7 a.m. Rohidas was called near market yard. From there they had been to Choudhar vasti. They had called Dada Choudhary at Pencil Chowk. He has further disclosed that Dada Choudhary had accompanied Mayur and others. They all had consumed alcohol. When Dada Choudhary had boarded the vehicle Mayur had strangulated him in the vehicle. At that time, Rohidas attempted to turn and see what was happening and at that juncture the present applicant had brandished his knife towards Rohidas. Thereafter, the vehicle had proceeded further and the dead body was abandoned on the road.

5 It is pertinent to note that even prior to filing of the charge-sheet i.e. on 13/9/2013 the accused Mayur has been enlarged on bail by the Sessions Court on the ground that there was no motive for Mayur to kill Dadasaheb Choudhar and that the first information is filed belatedly. The learned Counsel for the applicant rightly submits that all the other 3 persons have been enlarged on bail.

6 Perused the order passed by the Coordinate bench (Coram : A.M. Thipsay, J) dated 30/6/2014. This Court (Coram : A..M. Thipsay, J) in Criminal Bail Application No. 409 of 2013 has held that the accused Anil Khade was not present alongwith the deceased when the deceased was assaulted and hence he was granted bail. It is further pertinent to note that the order granting bail to Mayur on 13/9/2013 has not been challenged by the prosecution and hence, the same has attained finality. The learned Counsel for the applicant rightly submits that by virtue of doctrine of parity, the applicant also deserves to be enlarged on bail.

7 The case rests not only on circumstantial evidence, but this is a case of direct evidence, wherein the eye witness has categorically stated that it was Mayur who had strangled deceased Dadasaheb Choudhar. The applicant is stated to be travelling in the said vehicle and was seated next to the eye witness. The role attributed to the present applicant is that he had threatened the driver who is an eye witness. In fact and circumstances of the case, prima facie the applicant deserves to be granted bail.

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

9 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.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)