

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2299 OF 2014

Silvester Sanjay Koli	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. Datta Mane, Advocate for the Applicant.
Mrs. G.P. Mulekar, APP for the State.
Mr. B.G. Tangsali, Advocate for the original
Complainant.

CORAM : P.D. KODE, J.

DATE : JANUARY 29, 2015

P.C.

. By this application the accused No.3 in the charge sheet submitted by Malvani police station, Mumbai against the applicant and eight others for the commission of offences under Sections 120-B, 302, 342, 201 and 511 of Indian Penal Code has prayed for bail.

2. The said police station has charge sheeted the applicant and the co-accused on the count of

themselves in furtherance of common intention or for achieving the common object of criminal conspiracy to murder one Jitendra Patil on the count of deceased demanding return of cash amount of Rs. 1,50,000/- and a gold neckless worth Rs. 50,000/- taken by charge sheeted accused No. 9 having murdered the said Jitendra.

3. Without unnecessarily detailing the matters from the charge sheet the prosecution case seems to be that the applicant has brought the said deceased to the house of charge sheeted accused No.1 and the charge sheeted accused Nos. 3, 4, 5 and 8 hiding at the said place had tied the limbs of the deceased and disposed of the dead body in a pit made in the house of charge sheeted accused No.1.

4. Upon query the learned APP and so also the learned advocate assisting the learned APP has

fairly submitted that the case against the applicant and all the other accused is based upon the circumstantial evidence. The learned APP has objected the prayer for bail on the count of offence being a heinous one and the role played by the applicant i.e. brining the deceased to the house at which he was killed being spelt from the material contained in the statements of 4 witnesses namely Kavita, Mithun, Jija and Pedru Koli.

5. It is submitted that during the course of investigation the tangible material has been collected revealing that the deceased was killed in the said house and his corpse was disposed of in a pit in the old house of charge sheeted accused No.1. It is urged that the prosecution has collected the material in the shape of CDR report of applicant, deceased and the co-accused revealing that during the said period there were talks in between them.

6. The learned counsel for the applicant has submitted that all the submissions advanced by the learned APP are based upon drawing unwarranted inferences upon the material contained in the statements of the said witnesses. It is submitted that in the charge sheet there is no material regarding the time at which the deceased succumbed to the death. It is submitted that the statements of witnesses referred *prima facie* does not transcend beyond the deceased along with applicant in afternoon had been to the house of charge sheeted accused No.1. By drawing attention to the statement of Kavita Koli, it is urged that the material therein militates against the prosecution case of the applicant having taken the deceased to the house of charge sheeted accused No.1. The recital of the said statements pointed out by the learned instructing advocate supports the said submissions as the material therein reveals that upon query made by the wife of the deceased, the

deceased has told of having received a call from the applicant and along with him he was going for demanding ornaments and money at the house of charge sheeted accused No.1. Needless to add, not as per prosecution case of deceased having taken applicant to said house.

7. The perusal of the said statement *prima facie* supports the submissions canvassed by the learned counsel for the applicant. Even considering the material in the shape of CDR, upon the specific query made the learned APP submitted the tower location covers the area of 5 km radius from the said tower and the relevant material does not revealing anything beyond than the exchange of calls between them and even the same being not a integral part of any person for coming to the conclusion on the said basis that the said person was at relevant place, merely because the said material reveals that mobile of applicant within

the area of tower in which the house of the deceased situated, the same cannot be said to a conclusive circumstance leading to the inference as canvassed by learned APP.

8. Now considering the law regarding conspiracy as explained by the Apex Court in the decision of "*State through Superintendent of Police of, CBI/SIT vs. Nalini¹*", it is difficult to accept that circumstances pointed out by learned APP within themselves are premature capable of the showing involvement in the conspiracy as alleged.

9. Having regard to such character of prosecution material i.e. the said circumstances even *prima facie* being incapable of forming a formidable charge leading to the involvement of the applicant in conspiracy alleged or commission of an offence in pursuance of it, the prayer for bail deserves consideration.

1. (1999 (5) SCC 253; AIR 1999 SC 2640.

10. Resultantly, the application is allowed. The applicant is directed to be released on bail upon executing a P.R. Bond in sum of Rs. 1,00,000/- (One lac) with one or more sureties to make up the like amount subject to the conditions after release of the applicant,

(i) staying at the address mentioned in the application.

(ii) attending the investigating officer on every first Monday in between 11 am to 1 pm.

(iii) not indulging in any activity of tampering the prosecution evidence and/or not indulging in any activity of coercing, threatening and pressuring the prosecution witnesses.

(iv) not directly or indirectly making any inducement, threat or promise to any person acquainted with the facts of the accusation against them so as to dissuade him/her from disclosing such facts to the investigating

officer and

(v) not misusing the protection granted by this order for fleeing away or for any other oblique purpose.

(P.D. KODE, J.)