

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4616 of 2016

District : Ahmednagar

Vijay Rajendra Kachi,
Age : 21 years,
Occupation : Business,
R/o. N-31/A 2, 9/11,
Sambhaji Chouk,
Vijay Nagar, CIDCO,
Nashik.

.. Applicant
(Original
accused no.2)

versus

The State of Maharashtra.

.. Respondent.

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Mr. S.P. Thorat, Advocate, for the applicant.

*Mr. A.S. Shinde, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 2ND SEPTEMBER 2016

ORAL ORDER:

Applicant / accused no.2 in Crime No. I-127/2015, for offences punishable under Sections 302, 201, read with Section 34 of the Indian Penal Code, registered with Police Station, Ghargaon, Taluka Sangamner, District Ahmednagar, by this application,

is praying for releasing him on bail.

2. The learned Counsel appearing for the applicant pointed out the order passed by this Court on 01.07.2016 in Criminal Application No. 2809 of 2016 and submitted that co-accused Rahul s/o. Rajendra Gotise is released on bail by this Court. The learned Counsel for the applicant argued that case of accused no.3 Rahul Gotise is exactly on par with the case of the present applicant and like Rahul Gotise, the applicant also accompanied main accused Pankaj at the time of alleged offence. The learned Counsel further argued that the offence took place because of money transaction and those transactions were attributable to accused no.1 Pankaj s/o. Bhikudas Sonawane. The learned Counsel argued that nothing came to be recovered from the applicant. Everything was recovered from accused Pankaj Sonawane. There is no possibility of tampering of evidence. The applicant will not flee from the course of justice. Therefore, in submission of the learned Counsel for the applicant, the applicant is entitled to bail as prior to trial, there is presumption of innocence of each and every accused person.

3. The learned Addl. Public Prosecutor opposed the application by contending that the case of the present applicant is not at par with that of co-

accused Rahul s/o. Rajendra Gotise as there is recovery of a knife from the present applicant. Similarly there is recovery of money from the present applicant.

4. I have carefully considered the charge-sheet including the FIR lodged by Police Sub-Inspector Mukhtar Mohammad Shaikh of Ghargaon Police Station.

5. Sometimes facts are more flabbergasting than fiction. This appears to be one more case of love affair going on terribly wrong in the climax of which a teen aged couple was done to death in most brutal manner. This was allegedly done by persons on whom the teen aged couple reposed utmost faith. Amansing s/o. Ashoksing and Sharvari d/o. Anil Phadke left sanctuary of their parental home and after eloping took asylum of accused no.1 Pankaj Sonawane and co-accused. What happened next can be seen from statements of their friend and associates.

6. Sharvari was resident of Nashik and she was aged about 17 years. Amansing was resident of Nalasopara (East) and he was aged about 18 years. Both were in love. Amansing eloped from his house on 14.11.2015 to join company of Sharvari on 15.11.2015. It is seen from statement of Sandesh Patole, that applicant Vijay s/o. Rajendra Kachi and co-accused Pankaj Sonawane took their custody from Nashik on

08.12.2015. Statement of Sandesh Patole further shows that one more couple by name, Anamik Walke and Mansi Mutha also joined company of accused Pankaj Sonawane and applicant Vijay Kachi. Both these accused persons then took couples to Chakan at the house of Dipak Sawant. Subsequently, accused no.1 Pankaj Sonawane provided a flat for residence of both these couples at Chakan in District Pune.

7. Statement of Rakesh Jadhav, who is employee of poultry business run by father of Sharvari (since deceased) goes to show that Sharvari had entrusted an amount of Rs. 12,50,000/- to Rakesh Jadhav for making arrangement of the couple after elping. Out of that amount, Rakesh Jadhav had entrusted Rs. 4,50,000/- to accused Pankaj Sonawane for making arrangement of residence of Amansing and Sharvari. That is how accused no.1 Pankaj Sonawane made arrangement of residence of the couple in a flat at Chakan. amansing, in the meanwhile has allegedly paid an amount of Rs. 5,00,000/- to accused no.1 Pankaj Sonawane.

8. It is seen from statements of witnesses in the charge-sheet, that the couple was not happy with the arrangement so made and, therefore, they were insisting accused Pankaj Sonawane to refund the amount. Statements of witnesses shows that there was quarrel on telephonic call between Amansing and

accused no.1 Pankaj Sonawane on few occasions over refund of money.

9. It is seen from statements of witnesses in the charge-sheet, that a plan was then hatched to eliminate Amansing and Sharvari by accused no.1 Pankaj Sonawane with aid of co-accused.

10. On 29.12.2015, Amansing, Sharvari, Anamik Walke, Mansi Mutha, Sandesh Patole and Manjusha Jadhav had been to Pune for a day out. At about 10.00 p.m., there was a telephonic call to Anamik Walke (witness) by accused no.1 Pankaj Sonawane. That the call was then taken by Amansing. Accused Pankaj Sonawane informed Amansing that Police has traced out Rakesh Jadhav and Rakesh Jadhav is going to disclose the whereabouts of the couple to the Police which may lead to their arrest. With this, accused no.1 Pankaj Sonawane called back all persons to the flat at Chakan. All six teen aged boys and girls then returned to the flat at Chakan. Present applicant Vijay Kachi, co-accused Rahul Gotise were present with accused Pankaj Sonawane at that time with a four wheeler vehicle. Accused persons then insisted Amansing and Sharvari Phadke to change their residence forthwith. Amansing and Sharvari showed reluctance to accompany accused persons. However, with much insistence and on promise by accused Pankaj Sonawane that they will be kept at the lodge at

Niphad, Amansing and Sharvari joined company of accused Pankaj Sonawane, present applicant Vijay Kachi and co-accused Rahul Gotise. Thereafter accused persons took them in a car at 01.30 a.m. of 30.12.2015. This event is vouched by Anamik Walke, Mansi Mutha, Sandesh Patole and Manjusha Jadhav to the Investigator.

11. Statement of Sandesh Patole, Anamik Walke and Mansi Mutha unerringly points out that Amansing and Sharvari left flat at Chakan with the present applicant and co-accused. Within few hours thereafter Vikas Dhondhibhau Shelke saw dead bodies of teen aged couple lying in a ditch in his field with flames coming out from their bodies. This fact was informed to Police and Mukhtar Mohammad Shaikh, P.S.I. went to the spot to see dead bodies of the couple still burning in a ditch in the field. Those dead bodies were then dispatched for autopsy. Post mortem report shows multiple stab wounds on dead bodies of the couple found in that field. Those partly burnt dead bodies were shown to their father and those were identified as dead bodies of Amansing and Sharvari by their parents.

12. Subsequently during investigation, statement of Prashant Bhamre came to be recorded. His statement shows that soon after the incident, the present applicant had been to his house and kept one

sack in the showcase of his house. Ultimately the Police took present applicant to the house of Prashant Bhamre on 06.01.2016 and that sack was recovered. A knife was recovered from that sack.

13. Then there is Panchanama of seizure of the CCTV footage of the petrol pump. This Panchanama shows that the present applicant as well as co-accused Rahul Gotise had been to the petrol pump with two empty bottles and purchased petrol in those bottles from that petrol pump soon before the incident i.e. at 07.40 p.m. on 29.12.2015. Thereafter they invited the couple to join their company. In that night itself, Amansing and Sharvari were done to death by multiple blows of knife and then their dead bodies were set on fire. Prima facie this evidence shows a plan to execute the couple in most brutal manner by all accused persons and this appears to have been done in furtherance of their common intention by accused persons. Hence one cannot say that the applicant / accused merely accompanied the main accused. If two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. Therefore, at this stage, it cannot be said that the applicant was just an accomplice and therefore he is entitled for release on bail.

14. It is seen from the charge-sheet, that four

witnesses had seen the present applicant and co-accused taking Amansing and Sharvari with them at about 01.30 p.m. of 30.12.2015. Within few hours their dead bodies were found. The case of the prosecution is based on last seen theory. Last seen theory comes into play when time gap between the point of time when deceased and accused are seen together alive and when deceased is seen dead, is so small that in all probability there are no chances of any other person committing the crime except the accused. In the case in hand, a teen aged couple was found dead within few hours they joined company of the present applicant.

15. The nature of crime and the circumstances in which it is committed, coupled with the evidence available against accused persons, are important considerations while granting bail. In the case in hand, deceased Amansing - aged about 18 years and deceased Sharvari Phadke - aged about 17 years had reposed complete faith on accused persons with a hope that on payment of hefty sum by them, accused persons would provide for their safety and residence so as to evade police. However taking advantage of their helplessness they were done to death in most brutal manner. The nature and gravity of the circumstances in which the offence is allegedly committed, the nature of the accusation against accused persons who acted in a league does not allow me to release the

applicant on bail. True it is that in this case, co-accused has been granted bail by this Court. But the facts of the present case and the evidence available against the present applicant, does not allow me to exercise my discretion for releasing the applicant on bail.

16. The Application is accordingly rejected.

17. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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