

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 128 OF 2016

SMT. DIYA DATTAGURU SINARI,
PRESENTLY IN JUDICIAL CUSTODY,
THR. SHRI SAJI MALIK. ... Applicant

Versus

STATE OF GOA, THROUGH P.I. PANAJI
POLICE STATION CRIME BRANCH AND
ANR. ... Respondents

Smt. A. Agni, Senior Advocate with Ms. Aditi Kamat,
Advocate for the Applicant.

Shri Pravin Phaldessai, Additional Public
Prosecutor for the Respondents.

CORAM:- C.V. BHADANG, J.

DATE:- 19th JULY, 2016.

ORAL ORDER:

This is an application for bail. The applicant, who is a co-accused is facing prosecution for the offences punishable under Sections 364, 365, 302, 201 and 120-B of IPC.

2. The prosecution case as elicited from the complaint dated 20.12.2015, lodged by one Bhagirath Kharol is that, the accused persons in furtherance

of a criminal conspiracy, abducted the complainant's brother-in-law by name Ratan Kharol on 17.12.2015 and caused his death and destroyed the evidence with an intention to screen themselves from punishment, by chopping the dead body in parts and disposing of the same at various places in the State.

3. It appears that the deceased Ratan Kharol was running a sugarcane juice gada. One Biju Gopi had asked the deceased to look after his shop, as Biju was required to go out for some urgent work. During the absence of Biju, a male person entered the shop and took away a pulley and the safety shoes. When the deceased accosted the said person (who according to the prosecution, is none other than co-accused Dattaguru Sinari, who is the husband of the applicant), the deceased was asked to mind his own business and the said person left in the car. Before that, there was a heated exchange between the deceased and the said person. The deceased informed the said incident to Biju

Gopi. The prosecution case is that the accused out of annoyance and vengeance had abducted the deceased and caused his death.

4. The record shows that in this case, initially, a report of the deceased having gone missing was lodged on 18.12.2015. On 23.12.2015, a dead body of a male, with head and lower limbs severed was found seen floating, near the bank of river Mhadai, which was later identified to be that of Ratan Kharol. Subsequently, the other parts of the dead body including the head and the two lower limbs, were also recovered from different places. During the course of investigation and interrogation of the co-accused Kishor Mahato, who was working as the driver of the co-accused Devidas Sinari (who has since committed suicide while in custody), had disclosed that he had accompanied the other co-accused and had stated that the present applicant was also present during the chopping/slashing of the dead body of Ratan Kharol. He also stated that the present applicant had given two

knives wrapped in a cloth and she had asked him to conceal them, which were accordingly concealed in the tank of one Subhash Sinari with the help of the present applicant.

5. After the completion of the investigation, the applicant and three other, including Dattaguru Sinari, Devidas Sinari (since deceased) and Kishor Mahato, have been charge sheeted.

6. The matter has been committed to the Court of Sessions, in which it is stated that charge is already framed.

7. The first application filed by the applicant before the learned Sessions Judge was rejected on 20.01.2016 and the second on 31.05.2016. Undisputedly, the applicant was arrested on 10.01.2016 and since then, she is in custody.

8. I have heard Smt. Agni, the learned Senior Counsel for the applicant and Shri Phaldessai, the learned Additional Public Prosecutor for the respondent-State. With the assistance of the learned Counsel for the parties, I have perused the copy of the charge sheet, including the alleged discovery made by the present respondent under Section 27 of the Evidence Act.

9. On hearing the learned Counsel for the parties, I find that insofar as the present applicant is concerned, the prosecution is placing reliance on the discovery allegedly made on 18.01.2016 by the present applicant, in which she has shown the place where the dead body of the deceased was allegedly chopped into pieces. According to the prosecution, some incriminating articles including a blood stained chappal, a cloth, a newspaper, sample soil and soil smeared with blood were recovered, which have been sent to the Chemical Analyser. The other material against the applicant is the confessional statement of the

co-accused, Kishor Mahato made on 09.01.2016.

10. I have carefully gone through the discovery panchanamas dated 18.01.2016 and 09.01.2016. Before considering the same, it is necessary to state that, at this stage, it is neither necessary nor appropriate to consider the material in depth, as the trial is still pending and any such observations are likely to prejudice either the prosecution or the accused at the trial. However, *prima facie* it appears that according to the prosecution, the applicant has stated that her husband had taken her in the night intervening between 17.12.2015 and 18.12.2015 in a Nano car towards Sanquelim, where the body of the deceased was chopped into pieces and in the morning Kishor Mahato and Devidas Sinari went in a Swift car with the other parts of the body, while the applicant and her husband carried the head and the lower limbs at Colvale Bridge, from where they threw them in the river. *Prima facie*, after excluding the incriminating part, of this statement, the only

discovery, is about indication to an open space.

11. The learned Additional Public Prosecutor has submitted that some incriminating articles were recovered from the said place and therefore, it would amount to discovery of the said incriminating articles. *Prima facie* it appears that the applicant had shown and indicated to a public place. The other material is the confessional statement by the co-accused, about discovery of two knives, which according to the co-accused were allegedly handed over by the present applicant. No other material has been pointed out at this stage, on behalf of the State. It is submitted on behalf of the State that the prime accused is Dattaguru Sinari, the husband of the applicant, who had a motive for commission of the offence. Thus, *prima facie* motive as a circumstance, cannot be attributed to the present applicant.

12. The case essentially rests on circumstantial evidence. The investigation is

complete and charge sheet is already filed. In my considered view, the applicant would also be entitled to the benefit of proviso to Section 437 of Cr.P.C. and in view of this, continued incarceration of the applicant may not be necessary.

13. The learned Additional Public Prosecutor has expressed an apprehension that the applicant would interfere with the prosecution witnesses. I find that the apprehension on behalf of the State can be take care of, by imposing appropriate conditions. The learned Senior Counsel for the applicant states that the applicant is staying with her uncle at Kudne, Sanquelim, Goa and she undertakes to furnish the affidavit of the applicant's uncle alongwith proof of his residence before the learned Sessions Judge.

14. Hence, the following order is passed:

O R D E R

(a) The application is allowed.

(b) The applicant be released on bail on execution of a P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.

(c) The applicant shall not contact or otherwise interfere or influence the prosecution witnesses in any manner.

(d) The applicant shall furnish her present permanent address to the learned Sessions Judge along with proof, as aforesaid.

(e) In the event of breach of any of the conditions, liberty to the prosecution to apply for cancellation of bail.

(f) Bail to be furnished before the learned Sessions Judge.

(g) Needless to mention, that the learned Sessions Judge shall not be influenced by any of the observations herein, at the trial.

(h) The application is disposed of,
in the aforesaid terms.

15. Parties to act on an authenticated copy of
this order.

C.V. BHADANG, J.

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