

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.487 OF 2016

Mr.Dinesh Sankhata Yadav .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Bhaves M. Thakur, Advocate for the applicant.

Mr.H.J.Dedhia, APP for the Respondent State.

Mr.Rahimtulla R.Sayeed, IO, Police Inspector is present.

CORAM : P.N. DESHMUKH, J.

DATED : 21st JUNE 2016

P.C. :

1 One of the accused namely Dinesh Yadav involved in Crime No.21 of 2015 registered by Sewree Police Station on 05/03/2015 initially for the offence punishable under Section 363 read with Section 34 of the Indian Penal Code wherein offence punishable under Sections 354, 302 of the Indian Penal Code came to be subsequently added, has sought bail.

2 Learned counsel for the applicant has submitted that there is no sufficient evidence establishing involvement of present applicant in the crime and as investigation is completed and charge sheet is filed in the trial Court, application be allowed as there is no investigation to be carried out. By referring to the statement of Ramkaran, it is pointed out that he is the sole eye

witness in the case and from his statement it cannot be said that applicant was instrumental in committing murder of deceased Tilli as, much prior to co-accused carried Tilli to Vakola Bridge, applicant had alighted from the vehicle in which they were travelling together.

3 The learned Additional Public Prosecutor, on the contrary, has opposed the application on the ground that applicant shared common intention with other co-accused and, therefore, his case cannot be singled out from other accused, and has submitted that application be rejected.

4 Perused the documents and report lodged by Afzal Mujawar - the brother of the deceased on receiving intimation from Bharat Chalwadi, on considering statement of Bharat, it is revealed that on 03/03/2015 at about 9.30 p.m. he telephonically informed one Ramkaran that there was quarrel between co-accused Chedilal and deceased Tilli. Accordingly, Ramkaran arrived at the office of Bharat, where at about 10.00 p.m., applicant Dinesh, co-accused Chedilal, Shailesh and Narayan arrived, and Chedilal informed that he would assault Tilli and was thus informed by Bharat that he should not take any such step. However, Chedilal was not ready to agree to such request being under the influence of liquor.

5 Documents further reveal that thereafter, applicant along with co-accused proceeded towards Sewree naka, where Bharat, while on his way back to home, met complainant-Afzal to whom he informed that there was quarrel and assault by co-accused Chedilal on Tilli.

6 On 04/03/2015 at about 9.30 p.m. Ramkaran telephonically informed Bharat that Chedilal and his friend had abducted Tilli and had thrown him down from Vakola bridge. Bharat on receiving this information searched for applicant, as well as, co-accused Shailesh, Narayan and deceased Tilli, however, he did not find them in Darukhana nor in Sewree area.

7 On 05/03/2015, Bharat again took search of Chedilal and his friend, and since they were not found throughout the day, in the evening, he gave said information to Afzal-brother of the deceased informing that as per information received by Bharat, from Ramkaran, applicant and co-accused on 03/03/2015 at about 11.30 p.m. abducted Tilli and after assaulting him carried towards Vakola bridge and has thrown him from the bridge.

8 It thus appears that on the basis of information received from Bharat, Afzal has lodged a report on 05/03/2015 in respect of incident, which has occurred on 03/03/2015.

9 Similarly, statement of Ramkaran, who had narrated incident dated 03/03/2015 to Bharat has further stated that on that day at about 11.00 p.m. applicant and co-accused were searching deceased near Udapi Hotel where Ramkaran was sitting in one car and saw that at the same time Tilli arrived and was apprehended by applicant Dinesh and co-accused, and was subjected to assault. Ramkaran intervened the assault, however he was threatened by co-accused Chedilal and all the accused then lifted Tilli and by putting him in a tempo went towards Cotton Green. Ramkaran also accompanied them by travelling in the

cabin of same vehicle and at Cotton Green co-accused again assaulted Tilli. It is specifically stated that co-accused Shailesh assaulted Tilli on his chest with the grip side of knife due to which he became unconscious, and thereafter co-accused Chedilal directed applicant Dinesh and co-accused Narayan to alight from their vehicle and to go to Darukhana area in Sewree, while Ramkaran, Chedilal and Shailesh along with deceased, who was then unconscious, proceeded towards Vakola bridge where accused Chedilal and Shailesh threw him down from Vakola bridge.

10 From the statements of Bharat and Ramkaran, it is material to note that though Bharat had witnessed a quarrel between co-accused Chedilal and Tilli on 03/03/2015 in the night hour and also claims that Chedilal extended threat to kill Tilli, no report or information was given by Bharat on that day.

11 Similarly, on 04/03/2015, though Bharat claims to have knowledge of co-accused Chedilal and others abducting and assaulting deceased Tilli and further claims to have knowledge of said accused throwing Tilli from Vakola bridge, remained silent even on 04/03/2015 and it is only in the evening on 05/03/2015, since he did not find co-accused nor Tilli, gave information to Afzal – brother of Tilli.

12 From the statement of Ramkaran Yadav, it is material to note that though he has stated about applicant along with co-accused having been indulged in committing assault on Tilli on two occasions prior to his being taken to Vakola bridge, his

statement is silent on the nature of assault by applicant or co-accused on deceased, except stating that co-accused Shailesh has committed assault by grip side of knife on the chest of Tilli. Admittedly, no injury certificate nor postmortem report are produced by the prosecution on record in spite of fact that the incident in question is dated 03/03/2015 and postmortem was carried out on 04/03/2015. No satisfactory explanation is put forth for non-production of said vital documents which could have been duly considered to ascertain the nature of injuries sustained by deceased before he was thrown from the bridge. The cause of death as stated in the death certificate is unnatural, complications following head injury.

13 From the documents on record, thus, there is nothing to establish as to how deceased sustained head injury. Moreover, from the statement of Ramkaran, as aforesaid, it reveals that before co-accused proceeded to Vakola bridge along with deceased, applicant and co-accused Narayan had alighted from the vehicle to go to Darukhana, at Sewree. In view of statement as above, applicant was not found present at the Vakola bridge, wherefrom deceased is alleged to be thrown down by co-accused.

14 Having considering involvement of applicant, as aforesaid, as the available material on record do not establish involvement of applicant in causing death of deceased, application is liable to be allowed, according to the instructions received by the learned Additional Public Prosecutor from the Investigating Officer that there are no criminal antecedents against the applicant, hence following order is passed.

- (i) Applicant Dinesh Sankatha Yadav involved in Crime No.21 of 2015 registered by Sewree Police Station shall be released on bail on his executing personal bond in the sum of Rs.50,000/- with one surety in like amount.
- (ii) Applicant shall mark his presence in the Sewree Police Station on 1st day of each month and shall attend each date of hearing before the trial Court.
- (iii) Applicant shall not indulge in tampering with the witnesses in any manner or in any other crime.

15 Application is disposed of in above terms.

(P.N. DESHMUKH, J)