

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. BAIL APPLICATION NO. 817 OF 2016

Mr. Pukhraj Chatarbhanji Jain ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Pradeep D. Gharat, Advocate for the Applicant.
Mr. S. S. Pednekar, A.P.P. for the Respondent – State.

**CORAM : A. M. BADAR, J.
DATE : 26th JULY, 2016**

P.C. :

1 The applicant/accused in Crime No. 209 of 2015 for the offences punishable under sections 302, 201 r/w. 34 of the Indian Penal Code registered with Roha Police Station, Dist. Raigad at the instance of informant-Sunil Kasar, Police Patil, by this application under section 439 of the Criminal Procedure Code, is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused. He argued that even if the entire case of the prosecution, as reflected from the charge-sheet, is accepted as it is then also the only offence which can be made out against the present applicant is that of under section 201 of the Indian Penal Code, which is bailable. Learned counsel for the

applicant argued that the entire case is based on circumstantial evidence. As per the case sought to be made out by the prosecution only allegation against the present applicant is to the effect that the present applicant had been to the premises of the building where the offence is allegedly committed and that too after commission of the offence, to remove and abandon the two wheeler vehicle of the deceased. Learned counsel for the applicant/accused argued that according to the prosecution case there are no averments of conspiracy nor there is any iota of evidence to show that present applicant was aware about the intention or plan of co-accused to commit murder of the deceased. Learned counsel further argued that earlier bail application of the applicant was withdrawn simplicitor without any observations on merits and as such the applicant is entitled to move another bail application in view of the provisions of section 439 of the Criminal Procedure Code, as nothing was decided on merits of the case while granting leave to withdraw the earlier bail application.

3 As against this, learned APP argued that the offence lodged against the present applicant is serious and evidence on record shows complicity of the applicant in the offence punishable under section 302 of the Indian Penal Code. The applicant had destroyed the evidence on commission of the instant offence. It is further argued that as earlier the bail application was already withdrawn, there is no change

circumstance, warranting entertainment of the present application.

4 With the assistance of the learned counsel appearing for the parties, I have carefully perused the entire chargesheet. The crime in question came to be registered on the basis of the FIR, lodged by informant-Sunil Kasar, a police patil of the village. He reported to the police that he saw a dead body lying in the field by the side of the Roha Tambadi Road via Hanuman Tekdi in burnt condition alongwith some burn tyres. The wheels of investigation were then set in motion and the dead body was then identified is that of one Kantilal Khimji Jain, who is stated to be the partner of the co-accused Jagdish Jain. Postmortem report shows that Kantilal Jain died because of the head injury associated with severe burns. Prima facie, it is seen that death is homicidal.

5 Now let us examine the nature of the evidence available against the applicant/accused in support of the accusations against him, as the same is relevant factor while deciding the bail application. Needless to state that the entire case of the prosecution is based on the circumstantial evidence. The first and foremost circumstance relied upon by the prosecution is that of recovery of napkin and gold chain at the instance of co-accused-Jagdish Jain. According to the prosecution case, on the basis of the confessional statement of

co-accused-Jagdish Jain, a napkin having dark stains and broken chain of yellow metal came to be seized. It is the case of the prosecution that because of some dispute, co-accused Jagdish Jain and his employee one Manisha Chordekar assaulted Kantilal Jain (since deceased) by means of hammer and caused his death in their office at about 7 to 7.30 p.m. on 30.10.2015. This alleged recovery in no manner implicates the present applicant.

6 The next circumstance relied upon by the prosecution, in order to connect the accused persons to the crime in question is of taking the dead body for its disposal by accused persons. For this purpose, reliance is being placed on statements of Shantaram Lendhe, Mangesh Wargude and Bhaskar Shind. All these employees of the Pepsi Company have stated that in night hours of 30.10.2015 they saw one man and woman on a four wheeler of white color bearing no. MH AH 06 BM 0903 near the field named as Umbarache Pani. The man was driving the said vehicle. They further averred that they also saw a fire at the left side of the road. Subsequently, the arrested co-accused Jagdish and Manisha are stated to have been identified by these witnesses. It is thus suffice to state that the prosecution has not alleged that the present applicant had in any manner taken part in disposal of the dead body. Prosecution has relied upon the statements of Praful Patil and Dinesh Bhillare for showing complicity of the

present applicant in the crime in question. The role attributed to the present applicant is that of taking two wheeler from the office premises and abandoned it at petrol pump. Statement of Praful Patel recorded on 08.12.2015 shows that on 30.10.2015, he saw one elderly person at Alibag near Revas Bypass going on black color scooter TVS Vego make MH 06 BB 8695. This witness stated that the said two wheeler vehicle was owned by deceased Kantilal Jain and the rider of the said vehicle had parked it at H.P. Petrol Pump and went away. This witness claims to have identified the person riding the two wheeler vehicle to be the present applicant by looking at his photograph published in the newspaper as well as whatsapp text. Perusal of the chargesheet does not show that the investigating officer has seized the newspaper publishing photographs of the present applicant or any screen shot of the whatsapp text messages reflecting the photograph of the present applicant. Statement of Dinesh Bhillare, the police constable, recorded on 8.12.2015 shows that in the night of intervening 30.10.2015 and 31.10.2015, he found an empty scooter at the petrol pump therefore, they brought it to the police station. The charge-sheet does not show that the scooter was having any stains of blood.

7 Except this, no other evidence to connect the present applicant to the crime in question is pointed out. Perusal of the chargesheet as such goes to show that after

commission of the alleged crime in question by the co-accused, subsequently, according to the prosecution case, the present applicant took the scooter from the office premises of the co-accused -Jagdish Jain and abandoned it at the petrol pump.

8 Prima facie, this act on the part of the present applicant reflects commission of offence punishable under section 201 of the Indian Penal Code, which is bailable. True, that on earlier occasion the applicant had applied for bail and the said application came to be withdrawn, but perusal of that order does not show any observations on merit, showing dis-entitlement of the applicant for his release on bail.

9 Thus taking overall view of the entire evidence collected by the prosecution against the present applicant, the offence thus disclosed is prima facie that of destroying the evidence after the commission of offence. Considering the nature of the evidence in support of the charge, pre-trial detention of the applicant is not warranted and therefore, the order :

ORDER

- i. The application is allowed.
- ii. The applicant/accused in Crime No. 209 of 2015 for the offences punishable under sections 302, 201

r/w. 34 of the Indian Penal Code, registered with Roha Police Station, Dist. Raigad at the instance of informant, be released on bail on executing PR Bond in the sum of Rs. 50,000/- and on furnishing one or two solvent surety in the like amount.

- iii. As a condition of this order, the Applicant should co-operate with the trial court in expeditious disposal of the trial.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.
- v. The applicant should not commit any offence of similar nature in future.
- vi. The bail application is disposed of accordingly.

(A. M. BADAR, J.)

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