

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

CRIMINAL BAIL APPLICATION NO.1108 OF 2016

Dharmesh Umesh Mishra .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Prashant G. Pandey, Advocate for the applicant.

Mrs.Rutuja Ambekar APP for the Respondent State.

Mr.S.N.Choudhar, API, Wada Police Station is present.

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CORAM : P.N. DESHMUKH, J

DATED : 21st JULY, 2016.

P.C. :

1 Heard learned counsel for the parties.

2 Accused involved in Crime No.I-260 of 2015 registered 22/10/2015 for the offence punishable under Section 302 of the Indian Penal Code by Wada Police Station, has sought bail.

3 The learned counsel for the applicant has submitted that applicant is falsely implicated as there is nothing to establish his involvement in the present crime. It is contended that applicant is roped in this crime, merely on suspicion of his being LIC agent of the deceased and on the day of incident had met deceased with regards to renewal of

his LIC policy. By referring to statements of witnesses namely Sultan Shaikh, Allauddin Ansari, Aiyaz Shaikh, Kamruddin Ansari, it is submitted that involvement of applicant from statements of these witnesses can not be established, as all these witnesses' statements are recorded after arrest of accused, and are based on hearsay evidence, as there is nothing in the entire charge-sheet to establish source of information to these witnesses, though they have specifically stated in their statements that they learnt that on 21/10/2015, in the night, applicant, who is LIC agent had visited Wada to obtain signature of deceased Rauf and being night time, preferred to stay with the deceased in his room, when there was a quarrel between them on the count of some monetary issue, as deceased said to applicant that he has deposited amount in his account and he has proof thereof and in the event applicant fail to return back said amount, he would lodge police case against him and according to the statements of these witnesses, on this count applicant got annoyed and therefore when deceased Rauf was fast asleep, he committed his murder by assaulting him on his head by pipe, which was at the spot.

4 It is contended by the the learned counsel for the applicant that the contents of above statements cannot be read for want of corroboration, as there is nothing on record to establish as to on what basis these witnesses have

knowledge of facts as stated in statements, as aforesaid, and thus submitted that application be allowed on this count alone, as all other evidence on record, which is in the form of location of mobile phone, alleged to be seized, of deceased from the possession of applicant and of motorcycle as well as that of keys of lock of room of deceased are all circumstances which can duly be acted upon only after prosecution evidence with reference to involvement of applicant otherwise is established and is reliable.

5 By referring to the statements of Kamruddin Shaikh immediate neighbour of deceased occupying room No.20, it is contended for applicant that in fact in the night of incident at around 12.00 midnight door of room of deceased in fact was found open with lights on, and some conversation was heard from this room. By referring to contents of said statement, it is submitted that this by itself does not prove the presence of applicant in the room of deceased at the material time. It is, thus, contended that since above referred evidence does not establishes involvement of applicant, applicant be released on bail by imposing conditions.

6 The learned Additional Public Prosecutor has opposed the application and has submitted that the statements, which are relied by applicant, of witnesses referred, as aforesaid, are after arrest of accused Dharmesh

on 07/11/2015 and has submitted that said statements need to be considered along with statements of witnesses Allauddin Ansari, Rani Mishra-wife of applicant, Vijay Kene, Kulsum Ansari, by which case of prosecution finds fully established involving applicant in the present Crime.

The learned Additional Public Prosecutor has submitted that other circumstance against the applicant further establish his involvement, which are with regard to spot panchnama of breaking open door of room of deceased, and recovery of key of lock, which was put to said door of room of deceased at the instance of applicant, along with motorcycle of deceased and its key.

7 She has also placed on record CDR reports establishing presence of applicant at the spot and has mainly relied upon seizure of cellphone of deceased at the instance of applicant along with CDR, according to which said cellphone was used by deceased till the date of incident and thereafter same was used by applicant after putting his sim card therein by removing the sim card of the cellphone of deceased at the instance of applicant under the memorandum panchnama.

8 The learned Additional Public Prosecutor has submitted that case of prosecution is based on circumstances, as aforesaid, which fully establishes the involvement of applicant to have committed murder of deceased Rauf.

9 With reference to the submissions advanced, as aforesaid, regarding reliance, if any, can be placed upon contents of statements of Sultan Shaikh, Aiyaz Ahmed Shaikh, Kulsum Ansari, on perusal of documents filed with the charge-sheet and FIR it reveals that the said is lodged by Tahir Ansari- master tailor to whom deceased, who was working in building construction carrying centering work, used to visit for stitching his clothes and, as such, were known to each other since ten years prior to incident. Further contents reveal that on 21/10/2015 at about 9.30 p.m. deceased attended house of complainant, as he was invited for dinner, when he informed the complainant that on that day one persons is coming to meet him from Vapi and to receive him, he left the house of complainant to reach to Wada, Khandeshwari Naka. Thereafter, complainant went asleep.

10 On the following day, at about 8.00 a.m. complainant was informed by his brother Kamruddin that motorcycle of Rauf was lying on Wada-Kandivali road in a open space. Accordingly, complainant tried to contact Rauf on his three cellphone numbers, out of which two were found to be switched of and on the third number there was no reply. Thus, complainant, his brother and Sultan owner of room occupied by Rauf visited the spot and found one motorcycle

lying there. However, in spite of obtaining search, did not find anyone there and, therefore, visited the room of deceased, which was found locked from outside. Thereafter, matter was refereed to police, who accordingly arrived on the spot and on breaking open the door, dead body of Rauf was found lying inside the room having injuries on head caused by dangerous weapon.

11 In the background of contents of report, as aforesaid and on perusal of statement of Allauddin Ansari, it is *prima facie* found that prior to the incident deceased had paid money to applicant towards premium for renewal of his LIC policy. As according to this witness, deceased has purchased one LIC policy through applicant and towards premium had made payment of Rs.1,20,000/- to the applicant three months prior to the incident by depositing said amount in his bank Account. However, 10 to 15 days thereafter applicant informed deceased that his policy has already lapsed and, therefore, that can be revived only after his medical examination is conducted, and thereafter due to Ramjan Id, as deceased was required to go to his native place, renewal of his policy was postponed till he returned back to Wada on 20th October 2015 in the night. On 21/10/2015, Allauddin on return of Rauf enquired with Rauf if he has renewed the policy, on this enquiry deceased has stated that on that day applicant, who is LIC agent is visiting him. In this

background, it is further stated by Allauddin that on the following day on 22/10/2015, in the morning, he was informed about lying of Rauf's motorcycle in a open space and of his visit with Tahir Ansari and Sultan, to the room of Rauf, where he was found dead, as aforesaid.

12 From the version of this witness, it is, thus, *prima facie* found that applicant was working as LIC agent and was involved in the renewal of LIC policy of deceased for which deceased has deposited certain amount in the applicant's Account, however, till the incident same was not renewed.

13 Similarly, from the statement of Kamruddin Ansari and Kamruddin Shaikh presence of someone in the room of deceased in the night intervening 21/10/2015 and 22/10/2015 in the midnight at around 12.00 is established. According to their statements, at that time they noted someone present in the room of deceased having conversation and the lights were on.

14 Statement of Kulsum Ansari-wife of deceased reveals that prior to the incident LIC policy of deceased had lapsed for which applicant had informed deceased that as the policy had lapsed three years before, he should arrange and bring Rs.1,70,000/- for its renewal and after Ramjan Id, deceased had deposited said amount in the back Account of

applicant and since then applicant was repeatedly calling deceased for renewal purpose and thus had reached to Wada on 20/10/2015, and on his reaching informed her on phone at Silvasa that on the following day i.e. on 21/10/2015 he will complete the LIC work. Her statement further reveals that in the night of 21/10/2015 at about 10.00 p.m. deceased informed her that LIC agent is reaching to Wada to obtain his signature and he is in his room and would be leaving to receive the LIC agent.

15 From the statement of above said witnesses, prosecution case is further found to be established involving of applicant as a person looking after renewal of LIC policy of deceased for which, it is *prima facie* found that deceased had transferred substantive amount in his Account.

16 From the statement of Vijay Kene – the Hotel owner it is noted that on the night of incident at around 11.30 p.m. deceased along with applicant had visited his hotel for having tea. The learned Additional Public Prosecutor by referring the statement of this witness has contended that his statement establishes presence of applicant with deceased at about 11.30 p.m. on the fateful night, which also appears to be one of the strong circumstance against the applicant.

17 On considering further documents filed with the charge-sheet, it reveals from arrest panchnama dated 07/11/2015, that one cellphone of Samsung make is seized from the possession of applicant, of which money receipt is seized from the spot, having same IMEI number. Case of the prosecution appears to be further connected with the applicant from the CDR. From which it reveals that said cellphone was used by deceased till the date of incident and was thereafter used by applicant by putting his sim card. Similarly, in this context, it is material to note that during the course of investigation sim card of phone of deceased came to be seized under memorandum statement of applicant along with other articles and is seized.

18 Having considering above stated facts coupled with further fact of recovery of key, of lock which was broken open by Investigating Agency, of room, wherein dead body of deceased was found, also goes to establish strong circumstance against applicant, as said key is recovered at the instance of accused along with key of motorcycle of deceased and are seized under panchnama.

19 When all above stated facts on record are considered together, *prima facie* there appears much substance in the statements of Sultan Shaikh, Allauddin Ansari, Aiyaz Shaikh, Kamruddin Ansari though recorded after the arrest of applicant, who all have stated about

involvement of applicant in causing murder of deceased after his arrival at Wada for obtaining signature of deceased, and of applicant staying in the room of deceased at the night of incident and inviting quarrel with deceased on the count of money deposited by deceased in the Account of applicant for renewal of his LIC policy. It is, thus, *prima facie* found that there is sufficient evidence against applicant establishing his involvement in the Crime, as even otherwise amount of Rs.20,000/- is recovered at the instance of applicant. On considering circumstances, as a whole, no case is made out for grant of bail.

20 Application is, therefore, rejected.

21 However, it is needless to say that learned trial Court shall not get influenced with the observations herein above and shall consider the case on its own merit.

22 Learned trial Court, however, is requested to expedite the case and make an endeavour to decide the same within a period of nine months from the date of framing of charge.

23 Registrar (Judicial) to communicate this order to the concerned Court.

(P.N. DESHMUKH, J)