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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1579 OF 2016

Jagdish Pukhraj Jain and Anr.	..Applicants.
V/s.	
State of Maharashtra	..Respondent.

Mr.Pradip D.Gharat for applicants.

Mr.Deepak Thakre, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 10TH AUGUST, 2016

P.C. :-

1. Applicants / accused in Crime No.209/2015 for offences punishable under sections, 302 and 201 read with 34 of the Indian Penal Code registered with Roha Police Station, District Raigad are praying for releasing them on bail.

2. Heard the learned counsel for applicants / accused. He argued that the case is based on circumstantial evidence in which there is no evidence of motive. The post mortem report is inconsistent with the case of the prosecution. The learned counsel further argued that the confessional

statements of both applicants are jointly recorded which is not admissible in law. The learned counsel further argued that confessional statements are not in tune with the mandate of section 27 of the Evidence Act. The learned counsel further argued that the prosecution has not dared to conduct the identification parade but rather satisfied with the statements of witnesses that they identified accused persons by looking at their photographs in newspapers and *Whatsapp* message. Those newspapers or print of *Whatsapp* message are not seized by the prosecution. The learned counsel further argued that as several links in the chain of circumstances against applicants are missing and as another view which is equally probable is possible in view of the statement of the widow of the deceased, pre-trial detention of present applicants is not warranted.

3. The learned APP opposed the application by contending that the crime in question is serious. He drew my attention to the statements of witnesses including Ashwini Thale, who is staff member of present applicants as well as deceased and submitted that present applicant No.1 had informed her about missing of the deceased.

4. Perused the charge-sheet. The case of the prosecution, as reflected from the confessional statement, is to the effect that applicant No.1 was the business partner of deceased Kantilal Jain. There was dispute between applicant No.1 and deceased Kantilal Jain over financial issues of partnership, therefore, at about 8.00 to 8.30 on 30th October, 2015, applicant No.1 and his employee applicant No.2 had committed murder of Kantilal Jain in their office by smashing head of deceased Kantilal Jain by means of an hammer.

5. Crime in question came to be registered on the basis of the F.I.R. lodged by informant Suresh Kasar, a Police Patil at 1st November, 2015. This lodgment of the F.I.R. was on getting information as well as verification thereof to the effect that dead body of a person in burnt condition was found in the field known as "Chinchecha Pani" on Roha Tambdi road.

6. The case is based on circumstantial evidence and the prosecution is alleging that applicant No.1 was having motive to eliminate deceased Kantilal Jain as there was dispute in between them. They both are alleged to be partners

in construction business. The dispute is alleged to be in respect of some financial matters. In the cases based on circumstantial evidence, motive with the accused plays an important role. Motive is that which impells the accused to commit the crime. Perusal of the entire charge-sheet reveals that there is no tangible evidence regarding motive with present applicants to eliminate deceased Kantilal Jain. On the contrary, statement of Mukesh Jain, who is also in the same business goes to show that on 30th October, 2015, he was in company of applicant No.1 Jagdish and deceased Kantilal Jain. Said witness Mukesh Jain is from Mumbai. After spending the day with applicant No.1 Jagdish and deceased Kantilal, he left for Mumbai in the evening hours. Applicant No.1 Jagdish and deceased Kantilal Jain had gone to the Bus Stand to see off Mukesh Jain. During the course of the day, witness Mukesh Jain had not noticed anything objectionable though he was in company of applicant No.1 Jagdish and deceased Kantilal Jain. According to the prosecution case, few hours thereafter, applicant No.1 Jagdish had committed murder of deceased Kantilal Jain with the help of applicant No.2 Mrs.Manisha Chordekar.

7. Weapon of offence alleged by the prosecution is hammer and mode of commission of crime is stated to be by giving blows of hammer on the head of deceased Kantilal Jain at their office. At this juncture, it is apposite to examine the report of the post mortem examination of dead body of Kantilal Jain. Post mortem report shows that there were several chop injuries on the dead body. Finding of chop injuries on the dead body is an evidence which is inconsistent with the version of prosecution about the weapon used in the crime in question.

8. The prosecution has relied upon confessional statements of accused persons. It is stated by the prosecution that confessional statement of applicant No.1 Jagdish Pukhraj Jain has resulted in recovery of napkin and chain. Then, according to the prosecution case, office which appears to have been shared by applicant Jagdish with the deceased came to be inspected. Spot panchanama came to be recorded on 9th November, 2015. Perusal of the spot panchanama does not show that anything incriminating was found on the spot of incident though assault was by giving blows of hammer on the head of the deceased.

9. According to the prosecution case, on the basis of confessional statement of both applicants, a place where the clothes were burnt came to be discovered and burnt piece of clothes came to be seized. This memorandum of statement of accused persons is alleged to be recorded on 8th November, 2015. Perusal of this memorandum goes to show that the Investigating Officer has chosen to title the confessional statement as statement given by both applicants unanimously. How both accused persons while in police custody could give exactly identical statement in chorus is a question which remains unanswered in the charge-sheet. That apart, perusal of the confessional statements does not show that both applicants have disclosed or described the place where they had burnt their clothes. Memorandum of both applicants recorded jointly does not mention the place where they allegedly burnt their clothes. However, while effecting panchanama, the Investigating Officer has recorded that both accused persons showed a place on the road going to Ramraj village.

10. Despite recording of confessional statements of

applicants, the weapon of alleged offence could not be recovered. Even the mobile of the deceased allegedly thrown by applicant No.2 could not be recovered and panchanama to that effect is drawn by the Investing Officer.

11. According to the prosecution case, both applicants have used four wheeler vehicle for disposing of the dead body by wrapping it in a bed-sheet. The charge-sheet reveals that nothing incriminating against applicants in the crime in question can be found in the four wheeler vehicle allegedly used for transporting the dead body with head smashed by blows of hammer.

12. According to the prosecution case, some persons have seen both applicants near the spot of burning the dead body in the night intervening between 30th October, 2015 and 31st October, 2015. They are Shantaram Londhe, Mangesh Vargude and Bhaskar Shinde. Those persons who are employees of Pepsi Company have stated that in the midnight of 30th October, 2015, they saw one man and one woman in a four wheeler vehicle bearing registration No.MH-06-BM-0903 near the field known as "Umbracha Pani". These witnesses

have stated that they have faintly seen the occupants of the car. How on the road passing through the fields in the midnight, passers-by could see and identify the occupants of the four wheelers is again a question which remains to be resolved. The prosecution has not conducted the identification parade and applicants were not subjected to identification in such parade. Newspapers and screen shots of *Whatsapp* message are also not seized.

13. Forensic evidence is not incriminating applicants in the crime in question.

14. In the case based on circumstantial evidence, circumstances against accused persons are required to be cogently and fairly established and cumulative effect of such circumstances must be consistent with the sole hypothesis of guilt of the accused persons and inconsistent with they being innocent.

15. Considering the evidence collected by the prosecution against applicants as stated in the foregoing paras, at this stage, it is not possible to hold that there is *prima facie* case for offence punishable under section 302 of

the Indian Penal Code against both applicants. There is no apprehension by the prosecution that if enlarged on bail, applicants would not be available for the trial or for receiving the sentence, if any. As the case is based on circumstantial evidence and most of the witnesses are police officials, there is no question of tampering the evidence of the prosecution. The trial against applicants will take its own time. Therefore, their pre-trial detention is not warranted and as such the order:-

- (i) The application is allowed;
- (ii) Applicants / accused in Crime No.209/2015 for offences punishable under sections, 302 and 201 read with 34 of the Indian Penal Code registered with Roha Police Station, District Raigad be released on bail on their executing P.R. bonds in the sum of Rs.50,000/- each with one or more solvent sureties in the like amount by each of them;
- (iii) As a condition of this order, applicants / accused shall co-operate with the trial Court in expeditious disposal of

the trial;

- (iv) Applicants / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that they shall not tamper with the evidence;
- (v) Applicants / accused shall not commit an offence similar to the offence of which they are accused or suspected of commission;
- (vi) The application is disposed of accordingly.

(A.M.BADAR, J.)