

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

CRIMINAL BAIL APPLICATION NO. 1624 OF 2016

Mahesh Mahipati Bhosale @
Adhik Patil.

... Applicant.

Versus

The State of Maharashtra.

... Respondent.

Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. Abhishek Yende, advocate for
Applicant.

Ms. Veera Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : NOVEMBER 28, 2016**

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 9/12/2015 in
C.R. No. 214 of 2015 registered at Karad Taluka Police Station, for

offence punishable under section 302, 363, 364, 201 read with 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed on 5/3/2016.

3 It is the case of the prosecution that a missing report was lodged at the Karad Taluka Police Station on 29/11/2015 by Vaibhav Patil and it was reported that Vijaysingh @ Adhik Sukhadev Patil i.e. the brother of the informant is missing since 28/11/2015. The missing registration number was 56/2015.

4 On 30/11/2015, Vaibhav informed his father that the Magic vehicle, which was driven by Vijaysingh was abandoned at Nagas phata near Rohan Dhaba and he learnt about the same from Kokrud Police station. When they came to Mahakal Police Station, they found that Tata Magic vehicle was parked in the police station. Vijaysingh was being searched by the police as well as the relatives of Vijaysingh. They were trying to locate him on the basis of the tower location of his cell phone. Vaibhav had learnt that footwear of Vijaysingh were

found in the ghats of Nagaj Raiwadi. The footwear were identified to be that of Vijaysingh. The father of Vijaysingh suspected that some person must have abducted him for some unknown reason. On the basis of his report, crime was registered for offence punishable under Section 363, 364 of the Indian Penal Code.

5 On 3/12/2015 Vaibhav informed his father that the police from Nhava Sheva Police Station had informed Karad Police Station that one abandoned dead body is found in the premises of Mazgaon Dock. The driving licence is found bearing name as Vijaysingh Sukhadev Patil. There was an enquiry as to whether any missing report is filed. Thereafter, Karad Taluka Police Station had informed the Nhava Sheva Police Station that the missing report has been filed. The father and relatives came to Navi Mumbai on 4/12/2015. They went to morgue of J.J. Hospital. They identified the dead body on the basis of the tattoo on the right hand of the deceased, marked as "V". The driving licence found with the dead body further establishes that it

was the dead body of Vijaysingh. The supplementary statement of Sukhdev Patil was recorded on 6/12/2015.

6 On 14/12/2015 another supplementary statement of Sukhdev Patil was recorded in which he has disclosed to the police that Vijaysingh was driving Tata Magic Vehicle between Karad and Shedgewadi. He used to stand in the queue of the taxi drivers at 5 a.m. Tanaji Patil, resident of Warunji also used to ply his vehicle from Karad to Shedgewadi. He owned 3 such vehicles. Vijaysingh some time used to take passengers at the bus stop on the way and therefore, there was quarrel between Tanaji Patil and Vijaysingh for the past two years. A year ago also, there was a quarrel between them. The first informant had pacified the said quarrel. Tanaji had threatened Vijaysingh of dire consequences. The police informed Sukhdev Patil that Tanaji Patil and his associates Sachin Pawar, Mahesh Mahipat Bhosale and Sambhaji Kolhare had taken Vijaysingh to Nagaj Ghat under the pretext of bringing passengers from Vita and thereafter, Mahesh Bhosale had thrown chilly powder in the eyes of

Vijaysingh and thereafter, Tanaji Patil and Shivaji Kolhare assaulted him with iron rod and tommy. They had then put the dead body into plastic bag. The bag was tied with yellow coloured rope and thereafter, it was thrown in the sea from Vashi Khadi Pool.

7 Post mortem notes are on record which would show that the deceased has sustained as many as 12 lacerated wounds. The body was in the state of de-composition.

8 In the course of investigation, Tanaji Patil was arrested and it prima facie, appears that on the basis of the disclosure made by Tanaji Patil while in police custody, the applicant was arrested.

9 The learned Senior Counsel appearing for the applicant has drawn attention of this Court to the statements of independent witnesses i.e. Reshma Shoukat Mulla, Shantaram Mahadev Patil, Ramesh Garje and Rajendra Kamble.

10 Reshma Mulla has disclosed before the police that she has boarded the vehicle of Adhik Patil to go to Vita. Adhik Patil had dropped them at Khanapur naka and informed her that he would take labours from Khanapur and return.

11 Witness Shantaram Patil has disclosed to the police that there were intermittent quarrels between Tanaji and Adhik Patil.

12 Ramesh Garje had informed the police that they suspected the involvement of the present applicant since he was not seen at the taxi stand soonafter Adhik Patil was found missing.

13 Rajendra Kamble has disclosed to the police that Mahesh Bhosale i.e. the present applicant was working as driver of one of jeeps of Tanaji Patil. That Adhik Patil was in the habit of humiliating and picking up quarrels.

14 The learned Senior Counsel rightly submits that there is no material against the present applicant, which could be converted into admissible evidence at the time of trial. The incriminating material against the present applicant is that he was a driver on the jeep of Tanaji Patil and secondly that he was missing since the date of the incident.

15 The learned APP has submitted that the investigating agency at this stage is placing implicit reliance upon the CCTV footage at the toll plaza on the way of Mumbai to show that Bolero jeep had proceeded to Mumbai and the dead body was found in the sea at Mazgaon dock. The principal allegations are against the co-accused Tanaji Patil and Shivaji Kolhare. Learned Senior Counsel rightly submits that the CCTV footage does not show that there was 3 persons in the said Bolero jeep. It only shows that the involvement of Tanaji Patil and Shivaji Kolhare.

16 The applicant has no criminal antecedent. It is pertinent to note that at this stage, investigating agency is relying upon the statement of the principal accused Tanaji to implicate the present applicant. In fact, the investigating agency has not recorded the statement of Tanaji under section 164 of the Code of Criminal Procedure, 1973 and by inference, it can be said that the said statement cannot be considered under section 30 of the Indian Evidence Act at the time of trial.

17 Upon perusal of the papers of investigation and the submissions advanced across the bar and the material against the applicant, this Court is of the opinion that the applicant deserves to be enlarged on bail. Needless to say that co-accused shall not claim parity with the present applicant.

18 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 439 of the Code of Criminal Procedure, 1973. The

learned Sessions Judge shall not be influenced by the same at the time of trial.

19 Hence, the following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more sureties in the like amount.
- (iii) The applicant shall not reside in the jurisdiction of Karad Taluka Police Station till framing of charge.
- (iv) The applicant shall not tamper with the evidence.

20 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)