

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1681OF 2015

Shri. Michael Raju Mozes.

..Applicant.

vs.

The State of Maharashtra.

..Respondent.

Mr. A.H.Ponda i/by A.M.Gosavi for the Applicant.

Smt. S.S. Kaushik, APP for the Respondent.

Mr.S.S.Yadav, API, Dongri Police Station present in Court.

CORAM : A.S.GADKARI, J.

DATE : 28th January, 2016

P.C.

The applicant is seeking bail in CR No.242/2014 registered with Dongri Police Station, Mumbai under Section 302, 201,342, 120B, 170 of the Indian Penal Code.

2) It is the prosecution case that the dead body of an unknown person was found within the jurisdiction of Manor Police Station on 21.8.2014 and the same was in decomposed condition. That, the dead body was taken to Rural Hospital, Manor, District Palghar. After the post-mortem examination the said body was disposed off by the Manor Gram Panchayat, Taluka and District Palghar. It is further the prosecution case that on 23.8.2014 Mr. Vishal Achrekar lodged a man missing complaint bearing No.38/2014 with the Dongri Police Station about the missing of his brother namely Vaibhav Achrekar from 20.8.2014. During the course of investigation, it revealed that the said deceased Vaibhav Achrekar was having love affair with accused No.3 Jystona More. The mobile phone of Jystona More was thereafter taken for verification by the police . It was found that from the mobile phone of Mr. Jystona More, a particular number was being contacted regularly. The police thereafter contacted the co-accused Prakash Patil and enquired with him. Initially Jystona More

and Prakash Patil did not divulge anything to the police. Subsequently, Jystona More informed the police that she was having love affair with the deceased and he was harassing her for physical relationship. She further informed that she was also having love affair with Mr. Prakash Patil (Accused No.1) and with a view to get rid from Vaibhav Achrekar she told the said fact to accused No.1 Prakash Patil . That, accused No.1 Prakash Patil along with his friend i.e. present applicant thereafter called Vaibhav Achrekar at Naigaon, District Palghar on 20.8.2014 at about 8.30p.m. The said Vaibhav Achrekar was thereafter taken to the office of the applicant. The accused No.1 Prakash Patil and applicant thereafter assaulted the said Vaibhav with fist blows, kicks and bambu stick and late in the night at about 10.00p.m. they committed the murder of Vaibhav with a rope by strangulating him. Thereafter, the applicant and accused No.1 Prakash Patil wrapped the dead body of the said deceased Vibhav in a bed sheet and from the vehicle of the applicant they went from the highway and threw the said dead body in the flowing river. After receipt of the said information Smt. Girija Mhaske lodged the first information report on 21.12.2014. After completion of investigation. charge sheet has been filed on 16.3.2015.

3) Heard the learned counsel for the applicant, learned APP and also perused the copy of the charge sheet.

4) The prosecution has put forth two circumstances as against the applicant in the present crime one last seen scene together and subsequently a PAN card of the deceased was shown to have been recovered at the instance of accused No.1 from the drawer of the writing table from the office of the applicant.

As far as last seen together theory is concerned the date of alleged incident of the commission of murder of deceased Vaibhav is 20.8.2014. The dead body of deceased Vaibhav was found by the

fisherman who were fishing in the Hat Nadi at Manor. The dead body was in decomposed condition. The Gram Panchyat, Manor thereafter performed the last rites of the said unknown dead body after the post mortem is conducted.

5) The Investigating Agency has recorded the statement of the witness by name Milind Padwal on 27.1.2015. The said witness has stated that on 20.8.2015 he contacted Francis D'souza @ Panchu (co-accused) for repayment of money given by him. The said co-accused called him at Naigaon between 11.30 to 12.00 noon. The said co-accused thereafter took the said witness in the office, which according to the prosecution was belonging to the applicant. At that time one person was accompanying the co-accused Panchu and they went to the office of applicant. The applicant and Prakash Patil thereafter took the said person inside the office. At that time Francis D'souza informed the said witness the name of the said person as Vaibhav Achrekar and that he was harassing the sister of Prakash Patil by name Smt. Jystona More. It is to be noted here that the first information report has been lodged by the police on 21.12.2014 after making a detailed preliminary enquiry in the missing complaint. Prima facie, it appears that co-accused Smt. Jystona More and Prakash Patil have disclosed the facts about the crime to the police during the course of the said enquiry therefore, recording of the statement of the said eye witness on 27.1.2015 prima facie creates doubt in the mind of the court.

6) As far as second circumstance of finding of the pan card of the deceased in the drawer of the applicant at the instance of accused Prakash Patil is concerned, it prima facie appears to be improbable as after commission of the murder at the said place, the accused persons would preserve any document of identity of the deceased at the said place. In view of the above, the applicant has made out a case for his release on bail.

Hence, the following order.

ORDER

- a) The applicant be released in CR No.242/2014 dated 21.12.2014 registered with Dongri Police Station, Mumbai on his furnishing PR bond of Rs.25,000/-with one or two solvent sureties in the like amount.
- b) After release from Jail, the applicant shall attend the Dongri Police Station on every 1st and 3rd Monday between 10.00 a.m.to 12.00 noon.
- c) The applicant shall attend all the dates of the Trial Court.
- d) The applicant shall not tamper with evidence and /or influence the prosecution witnesses.
- e) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)