

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

CRIMINAL APPLICATION NO. 1065 OF 2015

IN

CRIMINAL APPEAL NO. 240 of 2015

1. Ravindra Aappa Naik

Age 33 years,

Occ: Mason Work

2. Basappa Chandrashekhar Karguppi @ Naik,

Age 37 years,

Occ: Agriculture,

All res. of Kadalge,

Tal : Gadhinglaj,

District Kolhapur

.. Applicants

v/s.

The State of Maharashtra .

..Respondents

Mr. A.P. Mundargi, Sr. Advocate i/b. Mr. Jayant Bardeskar for the Applicant.

Mr.H.J.Dedia, APP for the Respondent State.

Mr.Tejas Hilage for the complainant .

CORAM : SMT. V.K.TAHILRAMANI &

SMT.ANUJA PRABHUDESSAI JJ.

RESERVED ON : APRIL 27, 2016.

PRONOUNCED ON : JULY 27, 2016.

P.C. (Per ANUJA PRABHUDESSAI, J.) :

1. This is an application for bail filed by the applicants, the

original accused nos.3 and 7 in Sessions Case No.9 of 2013, who have been convicted for offence punishable under Section 364 r/w. 34 of the Indian Penal Code.

2. The applicants and the other co-accused were charged for the offences under Section 364A, 302, 201 r/w. 34 of the Indian Penal Code. The case of the prosecution was that on 23.12.2012 between 11.00 to 11.30 p.m. the applicants and the other co-accused abducted one Vinayak Kagilkar with an intention of committing his murder, and thereafter committed his murder and threw his body in Dudhganga river.

3. Upon considering the evidence adduced by the prosecution, the learned Judge held the applicants and other co-accused guilty of offence under Section 364 r/w. 34 of IPC and sentenced to undergo imprisonment for 7 years and to pay fine of Rs.10,000/- i.d. to undergo S.I. for 3 months. The learned Judge however held that the prosecution had failed to prove that the abduction was for the purpose of committing murder and that they had committed murder

of Vinayak. The learned trial Judge therefore acquitted the applicants in respect of the offence under Section 364A, 302 and 201 of the IPC.

4. The applicants have filed Criminal Appeal No. 240 of 2015 challenging their conviction and sentence for offence under Section 364 r/w. 34 of IPC and have sought bail and suspension of sentence pending the appeal.

5. The Learned Senior Counsel Shri Mundargi has submitted that the names of the applicants are not mentioned as suspects in the missing report or in the complaint. He has further submitted that though PW5 Shrikant Dhangar claims to have seen the applicants pulling Vinayak inside the Omni van, he had not disclosed the said incident to anyone till 26.12.2004. He has stated that the conduct of this witness is unnatural. He further submitted that the applicants have been convicted only on the basis of suspicion and that there is possibility of the applicants being falsely implicated due to political rivalry.

6. The learned APP has submitted that the evidence of PW5 sufficiently proves the involvement of the applicants in the said crime. The learned APP has further submitted that PW5 had reported the matter to the mother of the deceased only after he had learnt that Vinayak had gone missing, and that there is nothing unnatural in the said conduct. He has further submitted that there is evidence to show that the applicants had abducted deceased Vinayak on 23.12.2012. The body of the deceased was subsequently retrieved from the Dudhganga river. He has submitted that it was obligatory on the part of the applicants to explain the circumstances in which the missing person had parted company. He has submitted that there is sufficient evidence on record to prove the guilt of the applicants not only in respect of Section 364 but also in respect of section 364A and 302 of the Indian Penal Code, and that the State has already filed an appeal challenging the acquittal in respect of Section 364A and 302 IPC.

7. We have perused the records and considered the submissions

advanced by the learned Senior Counsel for the applicant and the, APP for the Respondent/Stat learned APP for the State.

8. PW3 Akkatai is the mother of deceased Vinayak. The evidence of this witness vis-a-vis missing report reveals that on 23.12.2012 at about 7 p.m. her son Vinayak had gone to the village on bicycle. Since he did not return home till about 11 pm, she went in search of her son Vinayak. She saw her son talking to Chandrakant (A-1) near Vitthal temple. She went home thinking that he would return home. Since her son did not return home, next morning she went in search of her son and found his cycle near Vitthal temple. She was unable to trace her son, hence she lodged a missing report on 24.12.2012. She has stated that subsequently, PW4 and Shrikant Dhangar PW5 informed her that they had seen her son Vinayak talking to the accused no.1 Chandrakant near Vitthal temple. PW4 and PW5 also told her that they had seen the applicants and the other co-accused forcibly taking her son Vinayak in a vehicle. She thereafter lodged the complaint at Exh.34. She has stated that on 31.12.2012 she was informed that one body was seen floating in Dudhganga river at

Village Barwad. She was called to identify the body. She has stated that she had identified the said body as that of her son.

9. The evidence of PW5 Shrikant reveals that on 23.12.2012 at about 11.00 to 11.30 p.m. while he and PW4 Parshuram were proceeding to the village, they had seen the deceased Vinayak talking to the accused no.1 Chandrakant near Vitthal temple. His evidence further reveals that thereafter one Maruti Omni stopped near the temple and that the applicants and other co-accused forcibly pulled the deceased Vinayak in the said car and went away from the spot of the incident. He has deposed that he had informed PW3 about the said incident only after he had learnt that the deceased had not returned home and that he was missing.

10. The evidence of PW4 reveals that on 23.12.2012 at about 11 to 11.30p.m. while he and Shrikant Dhangar (PW5) were proceeding towards village, they had seen the deceased Vinayak talking to accused no.1 Chandrakant near Vitthal temple. His testimony further indicates that immediately thereafter Maruti Omni car

belonging to accused no.5 Sidhagonda has stopped near the temple and that Anvar (A2), Dastgeer (A6), Sanjay (A8) and Aakappa (A4) and some others got down from the Maruti Omni car and forcibly pulled Vinayak in the car and left the spot. This witness has not specifically stated that the applicants herein were involved in abducting Vinayak. However, in his cross examination he has made a general statement that he had seen all the accused getting down from the Omni car.

11. Considering the nature of the evidence against these applicants and also considering the fact that the applicants have been acquitted of offence under Section 364A, 302 r/w. 34 IPC, and have been convicted only for the offence under Section 364 IPC and further considering the fact that the applicants were on bail during the trial, in our considered view, the applicants are entitled for bail. Hence, the application is allowed on the following terms and conditions:

- i) The applicants are ordered to be released on bail on furnishing bail bond of Rs.50,000/- each with one or two solvent sureties in the

like amount to the satisfaction of the Sessions Judge, Gadhinglaj, Kolhapur.

ii) The applicants shall attend Gadhinglaj Police Station, on first Sunday of every month during the pendency of the appeal.

(ANUJA PRABHUDESSAI, J.)

(V.K.TAHILRAMANI, J.)