

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1758 OF 2016

Akash Gurudas Umbarkar

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Priyal Sarda Advocate for Applicant.

Mr. Vinod Chate APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 15, 2016.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein was arrested on 16/03/2016 in crime no. 73 of 2016 registered at M.I.D.C. Bhosari Police Station, Pune for offence punishable under sections 363, 364, 302, 201, 120 (B) r/w 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that the dead body of Prathamesh Pagare was discovered at the instance of one Dhiraj Kudale from the banks of river Bhima. That Dhiraj was taken into custody and in the course of interrogation, he had disclosed that he along with his friends had called upon

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Prathamesh and had taken him. Thereafter, he was strangled and his dead body was abandoned on the banks of river Bhima.

3) The learned counsel for the applicant submits that besides the bare statements of the original accused Dhiraj Kudale, there is no evidence against the present applicant in the charge-sheet.

4) Perused papers of investigation. In the course of investigation, investigating officer had recorded the statement of one Rupesh Katore who is into the business of tours and travels. He has disclosed to the police on 14/06/2016, his Eco car was not working and another Sumo car was sent to a company. That he had borrowed the car from his cousin father-in-law Gurdas Umbarkar who happens to be father of the present applicant. He had parked his own Alto car near his house. That the applicant had led the investigating agency to the Alto car which was used in the commission of the present case. Hence, the Alto car bearing no. MH-12-GN 1825 belonging to close relative of present applicant was recovered from the open space near the house of Rupesh Katore. It is also the case of the prosecution that the shirt of the deceased was recovered at the behest of the present applicant.

5) The learned counsel for the applicant submits that almost after 6 days

of the alleged incident, clothes of the deceased were purportedly recovered at the instance of the present applicant and the said recovery would not inspire the confidence of the court. According to the learned counsel, recovery has been falsely foisted upon the present applicant. It is pertinent to note that car of the relative of the applicant was used in the commission of the offence. It is true that investigating agency has not recorded the statement of the co-accused under section 164 of the Code of Criminal Procedure, 1973, however, statement needs to be taken into consideration at this stage as it implicates the present applicant along with Dhiraj Kudale and at the stage of trial after recording of substantive evidence, there is every possibility that the statement may be considered under section 30 of the Indian Evidence Act.

6) Taking into consideration the gravity of the offence and the nature of allegations and the papers of investigation, applicant does not deserve to be enlarged on bail.

7) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)