

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1759 OF 2016

Kiran Chandrakant Gaikwad	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent
WITH		
CRIMINAL BAIL APPLICATION NO. 1778 OF 2016		

Sudarshan Yashwant Aagleme	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent
CRIMINAL BAIL APPLICATION NO. 1917 OF 2016		

Ashish Anil Shah	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr.V.A.Shastry, Advocate for the applicant in BA/1759/2016.
Mr. Aniket Nikam i/b. Mr. Aashish Satpute, Advocate for the applicant in BA/1917/2016
Mr. Pankaj Purway for applicant in BA/1778/2016.
Mr. Y.M.Nakhwa, APP, for the State

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 14th December, 2016.

P.C.

Heard. These are the applications under Section 439 of Cr.P.C.

The applicants herein are arrested on 25.6.2016 in Crime No.73 of 2016 registered at MIDC Bhosri Police Station, Pune. The investigation is

completed and charge sheet is filed against the accused for the offences punishable under Sections 363, 364, 302, 201 and 120B of the Indian Penal Code.

2. It is the case of the prosecution that on 10.3.2016, Ajinath Manik Pagare lodged a report at the police station. That on 9.3.2016, his son Prathmesh had been to Urs at Village Moshi along with his friend Pappu Moholkar. At about 10 p.m. he returned home. He had received a phone call from some person to whom he had informed that since his parents were sleeping, he would meet the caller on the next day in the morning. That the mother of Prathmesh was enquiring with him and at that time he had told her that there are some boys outside the house and therefore she should speak softly. After some time, he had locked the house from outside and had accompanied his friends. In the midnight, the first informant had realized that his son had not returned home and therefore he enquired with all his friends about the whereabouts of his son. He was rest assured that his son had been abducted and therefore he lodged a report against unknown persons. On the basis of the said report, Crime No.73 of 2016 was registered against unknown persons for the offences punishable under Section 363 of the IPC.

3. On 12.3.2016, one Dheeraj Kudale was arrested on the ground of suspicion as it had transpired in the course of investigation that there used to be frequent quarrels between Dheeraj Kudale and Prathmesh Pagare. It had also transpired that the sister of Dheeraj Kudale was in love with Prathmesh Pagare and on that ground also Prathmesh was being threatened of dire consequences not only by Dheeraj Kudale, but by his friends also. Dheeraj Kudale was called to the police station for the purpose of enquiry. he succumbed to the interrogation of the police officers and had admitted that he along with Ajay Rathod caused homicidal death of Prathmesh. On 12.3.2016, the parents of Prathmesh were called to Vadgaon near bank of River Bhima. people had gathered on the spot. The police was also present. Dheeraj was brought by the police. In the presence of the parents of Prathmesh, Dheeraj had disclosed that he along with Ajay Rathod had killed Prathmesh. they had THEN strangled him with a handkerchief and thereafter they had thrown a large stone on the chest of Prathmesh. He also showed the spot from where they had thrown the dead body of Prathmesh in the river. Pursuant to the disclosure statement made by Dheeraj, the police had called for a crane and they had pulled the dead body out of the water. The said body was identified by the

parents of Prathmesh to be that of Prathmesh. Needless to say that the dead body of Prathmesh was discovered at the instance of Dheeraj who had admitted that he along with Ajay Rathod had caused the homicidal death of Prathmesh and had carried the same on the motorcycle and had thrown it in Bhima River.

4. The learned counsel for the applicant submits that as far as the role attributed to the present applicants is that they were friends of Dheeraj Kudale. It appears that they all belong to the group of Ganesh Saste who was the chief of organization of Shiv Yodha.

5. The learned APP submits that there is a recovery of a rope at the instance of accused Ashish Shah. There is recovery of blood stained clothes at the instance of Kiran Gaikwad. The learned counsel rightly submits that the incident has occurred in the intervening night of 9th and 10th March and the clothes are recovered after more than 2 weeks. It is pertinent to note that the deceased had not sustained bleeding injury. Column No.17 of the post-mortem notes would indicate that the deceased was strangulated. There are contusions and imprint abrasion on his neck, below thyroid cartilage which would indicate that he was strangulated. There was no

reason to have any blood stains on the clothes of the accused persons at the time of incident. Be that as it may, as far as accused – Sudarshan Aagleme is concerned, it appears that he has been arraigned as an accused subsequently due to the statement of Dheeraj Kudale which was recorded while he was in police custody.

6. Once again, in the present case, the investigating agency has failed to record the statement of the accused under Section 164 of Cr.P.C. for the reasons best known to them. In the eventuality that the statement of the co-accused would be recorded under Section 164 of Cr.P.C. the same would be admissible in evidence at the time of trial under Section 30 of the Indian Evidence Act. There are lacunas in investigation. Needless to say that it would be to the benefit of the accused.

7. As far as the present case is concerned, there is no sufficient material to clearly indicate for the time being to hold that the present applicants had in any way caused the homicidal death of deceased Prathmesh. The possibility that they have helped the principal accused in causing disappearance of evidence cannot be ruled out and for that they could be tried for an offence punishable under Section 201 of the IPC. It is

in these circumstances, the applicants deserve to be enlarged on bail.

8. The observations made hereinabove are restricted to an application under Section 439 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- (iii) The applicants shall not enter the jurisdiction of MIDC Bhosari Police Station and Village Moshi till the conclusion of the trial.
- (iv) The applicants shall report to the concerned police station on first and 3rd Sunday of each other till framing of charge.
- (v) In the eventuality that they fail to attend any two consecutive dates, the prosecution would be at liberty to file an application under Section 439 sub-clause (2) of Cr.P.C.

The applications stand disposed of.

(SMT. SADHANA S.JADHAV, J.)