

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

**CRIMINAL BAIL APPLICATION NO.1103 OF 2016
IN
CRIMINAL APPEAL NO.380 OF 2016**

Zahir Yusuf Khan .. Applicant
V/s.
The State of Maharashtra .. Respondent

**WITH
CRIMINAL BAIL APPLICATION NO.1104 OF 2016
IN
CRIMINAL APPEAL NO.380 OF 2016**

Mohammad Muslim Rashid Khan .. Applicant
V/s.
The State of Maharashtra .. Respondent

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Ms. Nagma Tandon, Advocate for the Applicants.
Mrs. G.P. Mulekar, APP a/w. Mr. Amey Deshpande, Advocate for
the Respondent - State.

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**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

DATED : SEPTEMBER 23, 2016.

P.C. :

The applicants were convicted and sentenced for the offences punishable under Sections 302, 201 and 120-B of the Indian Penal Code and they were sentenced to undergo

imprisonment for life in Sessions Case No.652 of 2014 by the Additional Sessions Judge, Pune.

2 Prosecution case in brief is as under:

Complainant Pratap Ganeshji Rathod was resident of Dhankawadi, Pune. He was involved in catering business since last 25 years. He along with his uncle Dalaram Rathod used to look after catering business. There were about 20 to 25 workers working under them. On 25th May, 2014, marriage ceremony of daughter of Mr. Solanki was to be performed. A dinner was arranged. Till 11.00 p.m., the guests were having dinner. Thereafter, the caterers and workers started collecting utensils and loaded in a pick-up van. First informant left the place at about 1.30 a.m. on 26th May, 2014. At about 2.50 a.m. he received a call from one of the worker who informed him that they were proceeding towards Dhanakwadi in the pick-up van, they saw Activa bike of Dalaram Rathod was lying on the road. They searched Dalaram Rathod but was not traced out. They informed that when Dalaram Rathod had left the place with his Activa bike, one red colour Indica car chased his Activa. The said Indica car might have dashed Dalaram Rathod or somebody might have abducted him.

3 Learned counsel appearing for the applicant submits that the evidence of accused Zahir Yusuf Khan (PW No.10) was relating to his pointing out the dead body which was lying on the spot. Learned counsel for the applicants submits that the panchanama was not drawn in accordance with law. Merely based on some circumstance, a person cannot be convicted for the offence of murder. In respect of other applicant Mohammad Muslim Rashid Khan, learned counsel submits that the prosecution has placed on record recovery of Indica vehicle at the instance of the accused. It is submitted that ownership of the vehicle has not been proved. The recovery panchas have not supported the prosecution. The person who was driving the vehicle was not identified. There was no identification parade held. The persons who were sitting in the Indica car were not identified. Learned counsel appearing for the petitioner placed reliance on the following judgments:

- 1) ***Mula Devi & Anr. Vs. State of Uttarakhand***¹
- 2) ***Jackaran Singh Vs. State of Punjab***²

Learned APP submits that the case is based on circumstantial evidence. The applicants were not on bail during

1 2008(14) SCC 511

2 1995 Cri. L.J. 3992 (Supreme Court)

the trial. The evidence could be scrutinized minutely at the time of final hearing.

4 We have perused the record placed before us. One of the co-accused namely Santosh Chavan was released on bail by this Court on 22nd August, 2016 in Criminal Application No.824 of 2014. This case is based on circumstantial evidence. *Prima facie*, we find circumstance relating to recovery of vehicle from accused and another circumstance where the accused pointed out that the dead body was lying on the spot are relied upon by the prosecution to fasten liability on the accused persons for committing murder of the deceased. In respect of recovery of vehicle, the panchas have not supported the prosecution. P.W.2 who is the registered owner of the vehicle deposed before the Court that he had sold the vehicle to one of the accused Mohammed Zakir Khan but was not able to produce any evidence in support of the same. *Prima facie*, we notice that merely based on the circumstances as stated above which are brought before the Court by the prosecution, the State is praying for rejection of both the bail applications. These circumstances are not of conclusive nature. The State has also relied upon blood stains being found on the clothes of Mohammed Muslim

Rashid Khan (Accused No.3). No blood group was detected on the blood found on the clothes so as to connect the accused with the crime. In the facts of the case, we are of the view that by putting certain conditions, the applicants could be released on bail.

:: ORDER ::

- (i) The applications are allowed;
- (ii) Pending hearing and final disposal of the appeal the substantive sentence awarded against the applicant in Sessions Case No.652 of 2014 by the Additional Sessions Judge, Pune stands suspended;
- (iii) Pending hearing and final disposal of the Appeal, applicant - Zahir Yusuf Khan and Mohammad Muslim Rashid Khan are directed to be released on each furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one surety each in the like amount;

(iv) Both the applicants shall attend the concerned police station once in a month on Monday between 11.00 a.m. to 12.00 noon.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)