

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2140 OF 2015

Sajid Ali Chaudhary .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Manoj Mohite with Mr.Shantanu R. Phanse and Husen Shaikh,
Advocates for the applicant.

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

CORAM : PN. DESHMUKH, J

DATED : 10th AUGUST 2016

P.C. :

1 Accused Sajid Ali Chaudhary involved in Crime No. 164 of 2015 registered by Nagpada Police Station for the offences under Section 302, 120B, 397 IPC r/w Section 37(1), 135 of Motor Vehicles Act, has sought regular bail.

2 Heard learned counsel for both the sides.

3 Admittedly, charge-sheet in this case is filed on 10th July 2015 against the applicant and co-accused who is stated to be released on bail, and subsequently died, while one accused is stated to be shown "Absconding" in the charge-sheet.

4 My attention is invited on the Memorandum of Understanding (MOU) entered into between deceased and applicant much prior to incident with reference to some monetary transactions between them, as applicant while dealing in sale of used cars and two wheelers, was accepting money from deceased who was having restaurant business. It is submitted that so far as this money transaction was going on, applicant had also issued number of blank cheques which were recovered during the course of investigation as produced by wife of deceased, and thus had submitted that in view of deceased already being supplied with blank cheques by the applicant, there can't be any motive for applicant to commit murder of deceased on this count.

5 Learned counsel for the applicant has then referred to statements of witnesses on record i.e. Mateen Qureshi, Abdul Razak Khan, wife of applicant and his mother, and had contended that from the statements of these witnesses, involvement of applicant cannot be established in any manner.

6 In fact, on pointing to material portions from the statements of wife and mother of deceased, it is submitted that on

the following day of incident, as per statements of these two witnesses, deceased was alive and was in the house. In the circumstances, it is thus prayed that application be allowed.

7 Learned APP opposed the application and had, at the outset submitted that dates mentioned as “15/4/2015” in the statements of wife and mother of deceased are by way of typographical error, and has therefore, submitted that they should be read as “14/4/2015”. To a specific query made to learned APP, on instructions from IO, it is stated that the copies of statements filed with the applications are xerox copies of original statements which are typewritten during the course of investigation.

8 In that view of the matter, there is no scope to say that statements annexed with the application are typed copies of original statements recorded during the course of investigation, but as stated aforesaid, these are xerox copies of original statements, and at this stage, are thus duly considered as contended on behalf of applicant to establish, if from the statement of these witnesses, involvement of applicant can be found in any manner.

9 Learned APP has thus, contended that since admittedly, there was a monetary transaction between applicant and deceased much prior to incident and as from the statements on record, it is also found that they had indulged in quarrel one day prior to incident, and since according to CCTV footage, servant of applicant, was found in the Company of deceased immediately prior to his death, above circumstances are sufficient to establish involvement of applicant and has thus, prayed that application be rejected.

10 In the background of submission and the case of prosecution as aforesaid, it reveals from FIR lodged by Maruti Kadu, Police Naik that on 14/4/2015 while he was on patrolling duty along with other staff at around 1.30 a.m., he received information from Control room that one person was lying in injured condition near Railway Rest House at Mumbai Central. Accordingly, he visited the spot and found that one person was lying in injured condition. He was thus, shifted at around 2.05 am to hospital where at 2.20 am, he was declared dead on admission.

11 During the course of investigation of the crime registered against unknown person, CCTV footage of nearest

available CCTV cameras was obtained, and it is the case of prosecution that according to said footage, servant of applicant namely Wasim Shaikh is found as a pillion rider along with deceased. Accordingly, he came to be arrested and during the course of interrogation, at his instance, one knife, clothes and some cash to the extent of Rs.4,640/- came to be recovered. Admittedly, said co-accused is released on bail.

12 From the case of prosecution as above, it thus reveals that it is only because co-accused Wasim Shaikh, who happens to be servant of applicant, was found in the company of deceased on a scooter at around 1.19 am, while the dead body was stated to be found at 1.30 am, applicant is involved in this crime since applicant prior to the incident was having monetary transactions with the deceased.

13 In the light of above stated involvement of applicant, as set out by prosecution, documents forming part of charge-sheet reveals that various cheques are issued by applicant to the deceased much prior to the incident valued for Rs.20 lakhs, 15 lakhs, 10 lakhs, and few cheques are also found duly signed by applicant and are blank. Admittedly, all these cheques came to be seized from the possession of wife of deceased as produced by her.

14 Above issuance of cheque by applicant corroborates fact of his having monetary dealings with the deceased which is found further substantiated from the MOU entered into between them in the month of March 2015.

15 Considering the case of prosecution itself of applicant issuing blank cheques and even other cheques duly signed by him valued, as aforesaid, it cannot be said that applicant had any ill-intention in respect of the amounts received by him from deceased as set out by prosecution. On the contrary, there appears no reason for applicant to commit murder of deceased as he had already parted away with the blank cheques or cheques in above denominations by handing over same to deceased.

16 From the statements of Mateen Qureshi recorded on 9th May 2015, it reveals that he has stated above strained relations between applicant and deceased on the count of some monetary incident.

17 Similarly, according to the statement of Abdul Razak on 14.4.2015, deceased had informed him at around 8.00 pm that on the previous day, applicant had called him to meet near Sardar

Hotel at Tardeo where he visited with his mother and had indulged in quarrel, when applicant had assured deceased that he would pay back amount on 15/4/2015. It is material to note that statement of Abdul Razak also reveals that about one week prior to recording of his statement which is dated 15th April 2015, applicant in his presence issued 4 blank cheques to deceased in a hotel.

18 From the statements of Sadia Riyaz Qureshi-wife and Smt.Akbari Qureshi, mother of deceased respectively, they appear to have stated that on 14/4/2015 at around 1.30 am, applicant contacted deceased on phone and had informed him to meet at a Pav Bhaji stall at Tardeo and as deceased was a patient of Hyper Tension, he was sent along with one Asif and Hussain as well as his mother, where some quarrel is alleged to have occurred between them on the issue of monetary transaction.

19 It is material to note that the incident involving death of deceased has occurred in the night intervening 14/4/2015 and 15/4/2015 as the dead body was found lying on the spot at around 1.10 am while from the statements of these witnesses, they appear to have stated that on 15/4/2015 as usual at around 6.00

pm, deceased left from his house to attend his business and returned back at around 11.00 pm for having his meals, and thereafter, again went out of the house at 11.30 pm, informing his mother that applicant has called him to collect money. Above statements of these two witnesses, thus, establish fact of deceased being in house on 15/4/2015 which statement directly contradicts contents of report, as aforesaid.

20 Though prosecution has also heavily relied upon statement of Ajit who has stated that applicant on 14/4/2015 at 11.30 pm, had contacted him from his mobile phone and requested to provide him his bike which he accordingly provided, and has stated that same was thereafter found parked in the parking area below the building, which is also claimed to be a circumstance against the applicant. It is necessary to note that as per the statement of this witness, applicant is his friend and they were knowing each other for last more than 5 years, and in that view of the matter, merely because applicant prior to the date of incident, had asked for his two wheeler, this by itself is not sufficient to connect the applicant with the present crime, which vehicle during the course of investigation, is admittedly, seized at the instance of co-accused.

21 Even otherwise, nothing incriminating is recovered from or at the instance of applicant, and as admittedly, except for above statements and documents as aforesaid, there is nothing to establish involvement of applicant in the present crime, and on further considering the fact that co-accused, who immediately prior to the incident was found in company of deceased, is already released on bail, application is liable to be allowed by imposing condition as per order.

O R D E R

Applicant shall be released on bail in the sum of Rs.50,000/- with one surety in like amount.

While on bail, applicant shall mark his presence at Nagpada Police Station on first day of each month pending trial between 6.00 pm to 8.00 pm, and shall attend trial Court on the fixed dates.

(PN. DESHMUKH, J)