

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2295 OF 2015

Amol Datta Lakhe	... Applicant
Vs.	
The State of Maharashtra	... Respondent

WITH
BAIL APPLICATION NO.2296 OF 2015

Mangesh Ram Chaudhry	... Applicant
Vs.	
The State of Maharashtra	... Respondent

WITH
BAIL APPLICATION NO.2297 OF 2015

Akshay Chandu Chaudhary	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr.S.S. Parab with Ms.Sulabha Rane i/b Mohan R.P. Rao for the
Applicants
Mrs.M.H. Mhatre, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **APRIL 13, 2016**

P.C.:

1. All these three bail applications are preferred by the three accused persons who are facing prosecution under sections 302, 120B, 201, 147, 148, 149 of the Indian Penal Code in C.R. No.310 of 2015 registered with Manpada police station, Thane, on 1.6.2015 at the instance of one Habib Abdul Khan. It is the case of the prosecution that the informant at around

8.30am, while going to drop his son came across people, who were gathered around a dead body. So, he went to the police station and gave information to the police pursuant to which the offence was registered. The body was of a male person aged about 35 years. In the course of investigation, the police found that the body was of one Satyavaan Gole, who was working as a driver of one of the applicants/accused Mangesh Chaudhry. On the night intervening between 31.5.2014 and 1.6.2015, he did not return home. However his wife had received a call from him at around 9.30 to 10pm and at that time, he informed his wife that he was having dinner at a dhaba and he was with one Akshay Chaudhary, one of the applicants/accused. However, he did not return home on that night and at 2pm on the next day i.e., 1.6.2015, she received a call from Manpada police station to come and identify the body. She identified that it was the body of her husband Satyavaan. Her statement was recorded on the same day i.e. 1.6.2015 and she has mentioned the name and she expressed suspicion against the applicant-accused Mangesh Chaudhary and Akshay Chaudhary. Pursuant to this, the police conducted investigation. They arrested all the three applicants/accused on 5.6.2015. the applicants/accused are in prison since then. Hence, these bail applications.

2. The learned Counsel for the Applicants has submitted that there is no evidence against the applicants. The case is entirely based on

circumstantial evidence which is very weak and doubtful. He submitted that the case of the prosecution is standing on a mere evidence of last seen together and recovery of wooden handles of spade from the applicants/accused. He submitted that though the wife of the deceased was informed that her husband would be coming on the same night, after dinner, she did not lodge any complaint of missing of Satyavaan till 2pm when she was called for identification of the body. He further submitted that the evidence of recovery under section 27 of the Evidence Act which the prosecution has relied on, is not a believable recovery as it has taken place six days after the incident. The witness, who alleged to have sold four wooden rods of spade, did not identify the applicants/accused as to who had purchased those spades on 31.5.2015. He further submitted that in the test identification parade, the dhaba owner where the deceased had dinner, had identified Akshay and that is the only stray circumstance against the applicant-accused Akshay. He further submitted that the result of the DNA profiling cannot connect the applicant-accused Mangesh in any manner with the offence of murder. He submitted that as per the interpretation clause 1 of DNA report, DNA profiles of blood detected on shawl, t-shirt of the deceased and jeans pant of the accused Mangesh are identical and from one and same source of male origin and further, the DNA profiles matched with the maternal and paternal alleles in the source. The learned Counsel on the basis of this report submitted that in fact no

jeans pant was produced of Mangesh at the time of recovery panchanama which was a grey dark pant which was produced by Mangesh at the time of recovery. Thus, these jeans in fact was of Satuyavaan and if all the clothes of the deceased were sent to DNA testing, the blood found on these clothes is bound to match and this will not connect Mangesh in any manner with this recovery. He further submitted that there is no evidence against Amol Lakhe and akshay. He further pointed out the statement of one Chhaya Gaikwad on the point of motive and submitted that the motive which is to be verified by the prosecution, cannot be accepted even at this stage as the flat was purchased by Mangesh for Rs.26 lakhs in the name of Satyavaan Gole and thereafter, Mangesh borrowed Rs.11 lakhs from Chhaya Gaikwad and out of which Rs.9 lakhs were returned and only Rs.2 lakhs was not paid by the deceased and it is difficult to accept that for such a paltry amount, the applicants/accused had killed the deceased.

3. Learned prosecutor has opposed the applications. She submitted that there is a motive of money behind this murder. She relied on the statement of his wife. She submitted that this motive is disclosed by her in her statement which was recorded on 1.6.2015. The statement Chhaya Gaikwad is also recorded by the police. She pointed out that there is sufficient evidence against the applicant on the point of murder. She further argued that because of this monetary transaction, the applicants/accused Mangesh had a reason to kill the deceased. She

relied on the post mortem notes. The police have recorded statement of Hardware shopkeeper, who has stated that the wooden rods of spade were purchased by one of the applicants/accused. She further relied on the statement of the Dhaba owner who has identified Akshay and has also said that the deceased and the applicant-accused Akshay had been to his Dhaba on 31.5.2015; had dinner there and thereafter they went in an i20 car. She pointed out that at the time of purchase of the wooden rods, they took the same car which is mentioned in the statement of the shopkeeper. She further submitted that the clothes and the wooden rods were recovered at the instance of Mangesh. There is enough circumstantial evidence against all the accused. She also relied on the report of the DNA test and prayed that the applications be rejected.

4. Heard submissions, perused all the documents, the post mortem notes and the statements of the witnesses, which are pointed out by the learned Counsel for both the sides. The post mortem report discloses that the deceased died due to haemorrhagic shock due to head injuries with compression at neck point. The post mortem was conducted on 1.6.2015. It also discloses that there were a number of CLWs, bruises and the injury marks on the body of the deceased. The statement of the wife of the deceased and the statement of Chhaya Gaikwad in fact are important on the point of motive. There is an immediate disclosure of the suspicion by the wife. In the panchanama under section 27 of the Evidence Act, the

clothes of the accused, rods and so also jeans which were on the person of the deceased were all produced by the accused Mangesh. The DNA report which is produced, shows that the blood detected on the clothes i.e., that T shirt of Gole and blood stains found on the jeans of the deceased matched. Though it is mentioned in the report that the jeans pant is of Mangesh, it is apparently a wrong statement as, according to the seizure panchanama, the jeans is of the deceased which was produced by Mangesh and production of clothes of the deceased is, prima facie, a strong circumstantial evidence which establishes a prima facie nexus between Mangesh and the murder. As against Akshay, there is a circumstantial evidence of last seen together with regard to use of i20 car owned by him and the statement of the wife of the deceased as also Chhaya Gaikwad is also a circumstantial evidence on the point of motive. However, there is no such evidence against applicant-accused Amol Lakhe.

5. In these circumstances, I am inclined to reject the bail applications of Mangesh Chaudhary and Akshay Chaudhary i.e., bail application Nos.2296 of 2015 and 2297 of 2015. However, I allow the bail application No.2295 of 2015 filed by the applicant-accused Shri Amol Lakhe on the following terms:

ORDER

- i) The applicant-accused Amol Datta Lakhe shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount;
- ii) The said applicant-accused shall not tamper with the evidence or pressurise the complainant;
- iii) The applicant-accused shall not indulge into any criminal activity and shall attend on all the Court dates;
- iv) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.
- v) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

(MRIDULA BHATKAR, J.)