

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.800 OF 2017

SANTOSH BALA JADHAV

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Sanjay Kapse, Advocate for the Applicant.

Ms.Veera Shinde, APP for the Respondent – State.

Mr.P.S.Mete, Police Sub-Inspector, Sahar Police Station, present in the court.

CORAM : A. M. BADAR, J.

DATE : 10th NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.139 of 2015 for offences punishable under Sections 302 and 394 of the Indian Penal Code (IPC), registered with Sahar Police Station, at the instance of Bhagwati Tevar – son-in-law of deceased Sunmukhtai Ramaya Tevar, by this application, is seeking his release on bail, during pendency of his trial.

2 The learned advocate for the applicant / accused argued that the applicant / accused is behind bars since last seventeen months. The entire case of the prosecution is based on circumstantial evidence. He argued that the applicant / accused is not likely to abscond and by placing reliance on the judgment of Hon'ble Apex Court in the matter of **Susanta Ghosh vs. State of West Bengal**¹, the learned advocate submitted that if the applicant / accused is not likely to abscond, he is entitled for bail.

3 The learned APP opposed the application by placing reliance on statements of Vickysingh, Ranjeet as well as the evidence recording recovery of the ornaments of the deceased at the instance of the present applicant / accused.

4 I have considered the rival submissions and also perused the entire charge-sheet.

5 First Informant Bhagwati reported that during his morning walk on 20th April 2015, at about 8.00 a.m., he found the

1 (2012) 2 Supreme Court Cases 680

door of the room of his mother-in-law Sunmukhtai Tevar closed and therefore, he became suspicious and the door was broke open. He found his mother-in-law Sunmukhtai Tevar lying dead with several wounds. In his supplementary statement, the First Informant reported that few gold ornaments of his deceased mother-in-law Sunmukhtai Tevar are found to be sold.

6 Evidence against the present applicant / accused is comprising of his confessional statement recorded on 19th April 2016 by which he pointed out Vicky Gopal Singh as the person to whom looted ornaments were entrusted for the purpose of pledging them.

7 Statement of Vicky Gopal Singh shows that on 19th April 2015 as he along with the present applicant / accused as well as prosecution witnesses Ranjit and Ravi had consumed lot of liquor, he slept at the house of his friend i.e. prosecution witness Ranjit and in the morning hours of 20th April 2016 the present applicant / accused came at the house of Ranjit and entrusted the

gold ring and ear-wear to him. Vicky Singh has further disclosed that upon being asked subsequently, the present applicant / accused had told him that he was in need of Rs.6,000/- and therefore, as per version of Vicky Singh, he pledged those ornaments with Yashu of Powai. Yashu, in turn, had pledged those ornaments with a goldsmith and obtained Rs.6,000/- which was ultimately paid to the present applicant / accused.

8 There is statement of a witness named Akshay Ingole, who has disclosed about alleged extra judicial statement of co-accused Prem.

9 Witness Vicky Singh has stated that similar attempt to rob the deceased Sunmukhtai Tevar was made by the present applicant / accused along with the co-accused on 19th April 2015, but it was aborted because of arrival of the police van.

10 The entire case against the present applicant / accused is based on circumstantial evidence. It is well settled that in order to establish the guilt in the cases based on circumstantial

evidence, the chain of circumstances should be complete and must be leading to the sole hypothesis of the guilt of the accused and excluding any hypothesis of his innocence. In the instant case, the FIR is lodged on 20th April 2015. The instance of robbing and killing deceased named Sunmukhtai Tevar took place in the morning hours of 20th April 2015. The disclosure statement of the present applicant / accused is dated 18th April 2016 i.e. after one year. Statement of all witnesses appear to have been recorded after one year of the incident. Vicky Singh in his statement dated 18th April 2016 categorically stated that he was fully intoxicated on 19th April 2015 in a booze session with the present applicant / accused and prosecution witnesses, making him unable to go to his home and that is why he slept at the house of prosecution witness Ranjit. Statement recorded of all witnesses are giving narration of the incident in detail including the dates as well as time. One will have to keep in mind whether after lapse of period of one year, prosecution witnesses, having vice of consumption of liquor in excess, were in a position to narrate minute details of the incident after one year. That is in the realm of the trial.

11 Suffice to state that except the evidence regarding recovery and so called extra judicial confession of the co-accused surfacing after a lapse of one year from the incident, there is hardly any evidence against the present applicant / accused.

12 Considering the nature of evidence available against the present applicant / accused, on completion of the entire investigation and committal of the case after filing of the charge-sheet, further pre-trial detention of the present applicant / accused is not warranted. There is nothing tangible to point out that the applicant / accused will not be available for facing the trial, if released on bail. As such, the following order :

ORDER

- i) The application is allowed.
- ii) The applicant / accused in Crime No.139 of 2015 for offences punishable under Sections 302 and 394 of the Indian Penal Code (IPC), registered with Sahar Police Station, is ordered to be released on bail on his executing P.R.Bond in the sum of Rs.25,000/-, and on furnishing one or two sureties in like amount.

- iii) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.
- iv) The applicant / accused should not tamper with prosecution evidence.
- v) The applicant / accused should co-operate with the court for expediting the trial against him.

(A. M. BADAR, J.)