

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 934 OF 2017**

Sudhir Chinak @ Santram Gautam

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. S. S. Pandey I/b Mr. Ram Pandey for the Applicant

Ms. J. S. Lohokare, A.P.P for the Respondent-State

API Mr. A. R. Jagtap from Bhiwandi Taluka Police Station, Thane, is present

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 24th AUGUST, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-115 of 2015 registered with the Bhiwandi Taluka Police Station, Thane, for the alleged offences punishable under Sections 302, 201 of the Indian Penal Code.
3. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the said case. He submits that the prosecution case rests on circumstantial evidence and that, there is no

material *qua* the applicant. He submits that although the applicant is alleged to have thrown a 20 kg stone on the deceased, the same is highly improbable, considering the applicants' physique. He submits that the applicant was not capable of lifting a 20 kg stone single-handedly, and hence, the possibility of more than one person being involved, cannot be ruled out. He further submits that the body was found on the outskirts of the village in an isolated place. He submits that the investigation is complete and charge-sheet is filed. He further submits that all the witnesses have conspired to falsely implicate the applicant.

4. Learned A.P.P opposes the application.

5. Perused the papers. The incident has taken place on 23rd May, 2015. The prosecution case rests entirely on circumstantial evidence. According to the prosecution, the applicant threw a stone on the deceased, as a result of which, he succumbed to the same. There are statements of witnesses which clearly show, that the applicant was last seen with the deceased. The statement of Firoz Ahmed Khan has been recorded both, under Section 161 as well as under Section 164 Cr. P. C. The said

statement shows that the applicant was working with one Shamsuddin Ansari as a Plumber. He has stated that the applicant had taken money from him, and hence, he visited him at Haji Compound, on 16th May, 2015. He has stated that the applicant returned Rs. 13,500/- to him and promised to return the balance amount by 20th May, 2015. He has further stated that as the deceased was in need of money, he asked the applicant to pay the deceased, instead of returning the balance amount to him, on 20th May, 2015. He has stated that when he called the deceased and the applicant on 20th May, 2015, when the deceased had gone to take money from the applicant, both were with each other and that he spoke to both i.e. the applicant as well as the deceased. He has stated that after sometime, the mobiles of both, the deceased and the applicant, were switched-off and both could not be contacted.

6. The statement of Shamsuddin Ansari also shows that the deceased and the applicant had come to him and were asking him money. However, he could not give them the money. He has stated that thereafter, the applicant and the deceased went on the side and started talking and thereafter, left together. He has stated that he tried calling up the applicant,

however, his phone was coming switched-off. He has stated that thereafter, from 20th May, 2015, the applicant, his wife and children were not to be seen and had left the village. The incident took place on 20th May, 2015 and the applicant was arrested on 3rd June, 2015. The said statements clearly show that the deceased was last seen in the company of the applicant. The statements also *prima facie* reflect the motive for the applicant to commit the offence. There is recovery of a blood-stained knife at the instance of the applicant. The possibility of the applicant absconding also cannot be ruled out. Even otherwise, the trial has commenced and witness summons have been issued.

7. Considering the aforesaid, this is not a fit case to enlarge the applicant. The application is accordingly rejected.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.