

Anand

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

BAIL APPLICATION NO.1230 OF 2017

Bharat Rajaram Kokare .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.A.P.Mundargi, Senior Counsel i/b.
Mr.S.P.Kadam, for the Applicant
Mr.S.S.Pednekar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 07.07.2017

P.C.

. Heard learned senior counsel for the Applicant and the learned APP for the Respondent – State.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.824 of 2016 registered with the Nigdi Police Station, Pune, for the alleged offences punishable under Sections 367, 364, 302 r/w 34 of the Indian Penal Code.

3. Learned Senior Counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. He submits that admittedly, the Applicant was not present at the spot i.e. at godown, where the alleged incident of assault (by co-accused - Satish Thombare) took place. He submitted that the statement of Sunil Kokare, shows that the Applicant was busy in the preparation of his daughter's wedding which was scheduled to take place on the next day, and that when they reached the godown, Sagar (deceased) was lying on the spot with an injury on his head. He submitted that according to Sunil Kokare's statement, the Applicant told him, that Satish Thombare and Pramod Shinde were taking Sagar to the hospital and that he should follow them in his car. He submitted that merely because subsequently, the Applicant paid certain amounts to co-accused - Satish Thombare, would not show his complicity in the crime.

4. Learned APP opposes the Application. He submitted that there are statements of witnesses which show, that the Applicant had made certain payments to co-accused – Satish Thombare, on the next day and a few days thereafter.

5. Perused the papers.

6. The complaint is lodged by Monica Kavitate, daughter of the Applicant. She has alleged that she got married to Sagar Kavitate (deceased) against the wishes of her parents on 12.03.2016. She has stated that on 07.12.2016, her husband – Sagar(deceased) left home in a four wheeler Ritz car and did not return till 8.00 p.m. on 08.12.2016. She has stated that pursuant thereto, her father-in-law i. e. father of Sagar lodged a missing complaint. According to the Complainant, on 07.12.2016 at about 11.00 p.m., Sagar (deceased) spoke to her and disclosed to her that he was with her uncle –

Satish Thombare and asked her to speak to him. She has stated that Satish Thombare disclosed to her, that her husband – Sagar had come to the Rotary Club; and that he was abusing and threatening to create a ruckus/scene (जाळपोळ) in Seema's marriage. Satish also disclosed that Sagar had called Bharat Kokare (Complainant's father) and had abused him. On hearing this, the Complainant asked Satish Thombare to give the phone to Sagar, and asked Sagar to return back home. She has stated that Sagar abused her and again gave the phone to Satish Thombare, who disclosed that Sagar was heavily drunk and was threatening to kill him and that she should explain to him. Thereafter, Satish again gave the phone to Sagar, who disclosed to the Complainant, that Seema's wedding card was not given to her hence, he was abusing them. Again Sagar handed over the phone to Satish, who disclosed, that since Sagar was not listening,

he would make him understand in his own way and handed over the phone to Sagar, who disconnected the line. She has stated that thereafter, her husband did not return home. The said complaint was lodged by the Complainant on 11.12.2016 alleging offences punishable under Sections 367 & 364 of the Indian Penal Code. After Satish Thombare was arrested on 13.12.2016, he allegedly made a disclosure that he had killed Sagar and thrown his body near Jamkhed, Ahmednagar. Sagar's dead body was recovered in a decomposed state. Accordingly, Section 302 was added.

7. A perusal of Sunil Kokare's statement shows, that he was accompanying the Applicant on the day of the incident i.e. on 07.12.2016 from morning 10.30 a.m. till about midnight and a little thereafter, for the wedding preparation. He has specifically stated in his statement, that at about 11.30 p.m., the Applicant was

talking to Sagar on phone and that Satish Thombare was also present. He has stated that the Applicant told him, that they had to go to the Mohannagar Police Chowky for lodging a complaint against Sagar, and handed over the phone to Satish Thombare. Pursuant thereto, he and the Applicant went to the police station and the Applicant lodged an NC as against Sagar, for abusing him. He has stated, that on 08.12.2016 at about 12.15 a.m.(midnight), they went to the Rotary Club and from there to the godown. He has stated that when they reached the godown, they saw a wooden log in Satish Thombare's hand and found Sagar lying in an injured condition, with blood oozing from the head. According to Sunil Kokare, Pramod Shinde and the watchman were present there. Thereafter, Sagar was picked up and kept in his Ritz car. Sunil has further stated, that the Applicant asked him to follow Satish Thombare, as they were taking Sagar to the hospital, pursuant to which he followed

Satish Thombare, in his Zen car. It appears that as Sagar was dead, Satish Thombare took the dead body to village – Parkhrud Shivar, Taluka – Bhum, District – Osmanabad and dumped it there. The post-mortem report shows that Sagar (deceased) had sustained a depressed comminuted fracture over the right temporal occipital region three intersecting lines of fracture. The body was in decomposed condition, when it was found.

8. Prima facie, it appears that the incident of assault had taken place, prior to the Applicant reaching the godown. After, the Applicant reached the godown, admittedly, Sagar was not assaulted. Sunil Kokare's statement shows that Sagar was put in the car and was supposed to be taken to the hospital. It appears that subsequently, some payments were made by the Applicant to Satish Thombare. A perusal of statements of some of the witnesses shows, that

Satish Thombare was abusing the Applicant and was threatening the Applicant, when demand for money was made. Admittedly, the Applicant's daughter got married and there were functions on 08.12.2016 & 09.12.2016 and the Applicant was present throughout.

9. In the peculiar facts of this case, considering the Applicant's role, continued custody of the Applicant is not necessary. Investigation is complete and charge-sheet is filed. Accordingly, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions:-

O R D E R

- (i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs.25,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall report to the investigating officer of the concerned police station on the **1st Monday of every month** between

10.00 a.m. and 11.00 a.m. till the conclusion of trial;

(iii) The Applicant to cooperate with the conduct of the trial.

10. The Application is allowed in the aforesaid terms and is accordingly disposed of.

11. 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.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)