

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

**BAIL APPLICATION NO. 1442 OF 2017**

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| Ajay Laxman Darveshi     | .. Applicant  |
| <b>Vs.</b>               |               |
| The State of Maharashtra | .. Respondent |

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Mr.D.B. Dixit a/w. Ms.Priyanka Dubey and Ms.Radha Agrawal i/b.  
Mr.P.R. Yadav, Advocate for the Applicant.  
Mr.Arfa Sait, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : JULY 25, 2017.**

**P.C. :**

This is an application for bail in connection with C.R. No.318 of 2015, registered with Ghatkopar Police Station, Mumbai for an offence punishable under Section 302 read with 34 of IPC. The applicant was arrested on 16<sup>th</sup> August, 2015. On completing investigation, charge-sheet is filed.

2           The prosecution case is that accused no.1 Girish alias Gopi Bhanushali had advanced an a loan of Rs.10,00,000/- to the deceased Vijay Vikamashi. The said amount was advanced the mediation of accused Rahul. Despite lapse of one year, the

deceased Vijay did not repay the same to the accused Gopi. It is further alleged that in the intervening night on 4<sup>th</sup> August, 2015 and 5<sup>th</sup> August, 2015, the accused assaulted the deceased Vijay with fist and kick blows. Due to said assault, Vijay died. The accused injected turpentine and covered the dead body with the tarpaulin sheet. The incident was taken place at the loft of the dispensary of Dr. Deepak Bhanushali. On 5<sup>th</sup> August, 2015, the persons residing near the vicinity noticed some foul smell emanating from the dispensary and, therefore, Dr. Vasant Bhanushali informed the said fact to Dr. Deepak Bhanushali. Thereafter the First Information report was lodged.

3            During the investigation, statements of various witnesses were recorded. The co-accused Rahul had preferred an application for bail before this Court viz Bail Application No.611 of 2016. This Court while granting bail to the said accused has observed that the statements of four alleged witnesses to the incident were recorded after gap of 14 days. *Prima facie*, there is no plausible explanation given by the said witnesses for not appearing before the police on 5<sup>th</sup> August, 2015 or 6<sup>th</sup> August, 2015 to give information pertaining to the said crime. In addition, it was also observed that the said accused had also sustained

some injuries on his person which has not explained by the prosecution. The said accused Rahul was granted bail vide order dated 31<sup>st</sup> August, 2016. In pursuant to that, the co-accused Mahboob Abdul Latif Sayeed was also granted bail by the Session Court by order dated 18<sup>th</sup> July, 2017.

4            Learned advocate appearing for the applicant submitted that the role which has been attributed to the applicant and the co-accused Rahul as well as Mahboob Sayeed is identical. It is the prosecution case that Rahul, Mahboob and the applicant were instrumental in assaulting the deceased on the date of incident. The prosecution is relying upon the statement of witnesses which were belatedly recorded. It is, therefore, submitted that considering the role attributed to the applicant and the role attributed to the co-accused, the applicant is entitled for parity.

5            Learned APP opposed the application for bail. It is submitted that the case of the applicant can be distinguished from the person who are granted bail. Learned APP pointed out statement of one Anthony Chauhan, which was recorded on 22<sup>nd</sup> August, 2015. In the said statement, it is stated that the applicant

had made extra judicial confession to the said witness that the deceased had been murdered. Learned APP also pointed out the statement of one Deepak R. Joshi which was also recorded on 20<sup>th</sup> August, 2015. In the said statement, it is stated that the applicant and the Mahboob had threatened the said witnesses. The accused Mahboob had pointed out pistol at the said witnesses and the accused had demanded vehicle and the amount of Rs.3,50,000/- from him. This witness also stated that on account of threat he did not come forward at the earlier point of time before the police against the applicant - accused and after arrest was made only the statement was recorded. It is , therefore, submitted that the co-accused who are granted bail and the present applicant defers. It is also submitted that there are antecedents against the applicant which are registered with Shivaji Park Police Station, Dadar, Mumbai.

6           It is, therefore, submitted that the application preferred by the applicant may be rejected.

7           I have gone through the entire record. This Court while granting bail to the accused Rahul has observed that the statements of the eye witnesses are recorded belatedly after a

gap of 14 days and there is no plausible explanation for belatedly recorded the statement. The role in commission of crime which is attributed to accused Rahul is similar to the present applicant. As far as the statement of Anthony Chauhan, it is apparent that the same was recorded on 22<sup>nd</sup> August, 2015. The incident had occurred between the night of 3<sup>rd</sup> August, 2015 and 4<sup>th</sup> August, 2015. The extra judicial confession was purportedly made on 4<sup>th</sup> August, 2015. Apart from the fact that there is delay in recording the statement, the evidence of extra judicial confession is weak in nature. As far as the statement of other witnesses which is distinguishing factors against the applicant. The learned APP states that the statement of Deepak Joshi was recorded on 20<sup>th</sup> August, 2015. In the said statement, the role is also attributed to accused Mahboob with regard to threatening of the said witness and demand of vehicle as well as amount by threatening the said witness. It is stated that accused Mahboob had pointed out pistol to the said witness and threatened him. it is pertinent to note that accused Mahboob granted bail by the Sessions Court by order dated 18<sup>th</sup> July, 2017. It is also seen that there were antecedents against the said accused Mahboob.

applicant is concerned, it is submitted by the learned advocate for the applicant that C.R. No.269 of 2001 and C.R.No.166 of 1999 has resulted in acquittal. The cases bearing C.R. Nos.147 of 2004 and 189 of 2004 which were registered for the offence punishable under Section 379 read with 34 of the IPC have been compounded. It is admitted that the case was registered vide C.R.No.114 of 2004 for an offence punishable under Section 324 of the IPC is pending. The applicant is arrested on 16<sup>th</sup> August, 2015 and since then he is in custody. The trial has not yet commenced.

9            In the light of the aforesaid circumstances, the application for bail can be allowed.

10           Hence, I pass the following Order:

**:: O R D E R ::**

- (i) Bail Application No.1442 of 2017 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.318 of 2015, registered with Ghatkopar Police Station,

Mumbai on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or more local sureties in the like amount;

- (iii) After release from jail, the applicant shall attend Ghatkopar Police Station, Mumbai once in a month on first Monday between 11:00 a.m. to 1:00 p.m., till the conclusion of trial;
- (iv) The applicant shall attend the trial Court on every date of hearing;
- (v) Any two consecutive defaults in compliance with the said condition attract Section 439(2) of Cr.P.C.;
- (vi) The applicant shall not tamper with the prosecution evidence and prosecution witnesses;
- (vii) Bail Application stands disposed of accordingly.

**(PRAKASH D. NAIK, J.)**