

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1642 OF 2017

Mr.Manish Bachendra Jha ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Niranjan Mundargi i/b. Mr.Randhir Singh, Advocate for the Applicant.

Mr.R.M.Pethe, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 6th NOVEMBER 2017.

P.C. :

1 The applicant/accused No.5 in Crime No.A-155 of 2016 registered with Vasai Road Railway Police Station for offences punishable under Sections 302, 120-B and 201 read with Section 34 of the Indian Penal Code, by this application, is seeking his release on bail during pendency of the trial.

2 Heard the learned Advocate appearing for the applicant/accused as well as the learned Additional Public Prosecutor appearing for the respondent/State.

3 The learned Additional Public Prosecutor opposed the application by pointing out statement of Ashishkumar Pande as

well as that of Chandra Nagesh Devadiga and submitted that statement of Ashishkumar Pande shows that the present applicant Manish Jha telephonically informed Ashishkumar that they are enjoying a party as Anupam had received salary from the Company. The learned Additional Public Prosecutor further pointed out that witness Chandra has stated that accused No.1 Mahendra Pande and the present applicant had been to the Beer Shop of this witness Chandra to purchase five strong beer. With this, the learned Additional Public Prosecutor argued that accused persons by hatching conspiracy invited the deceased and after intoxicating him had murdered him by strangulating him. Then the dead body was disposed of. For this purpose, the learned Additional Public Prosecutor pointed out statement of Rajesh Agrawal.

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

5 It is case of the prosecution that because of business rivalry accused persons including the present applicant had committed murder of Pawankumar Pande in the night intervening 01/09/2016 and 02/09/2016. They dispose of dead body by taking it in the cardboard box and by throwing it on the railway track.

6 Postmortem report as well as inquest panchanama goes to show that deceased Pawankumar Pande was well nourished person of 28 years of age. Postmortem report shows that he was having well-built. Inquest panchanama shows that deceased Pawankumar was having 5 feet 5 inches height.

7 Case of the prosecution is based no circumstantial evidence. One of the circumstances is witnessing carrying of the dead body in a cardboard box by Rajesh Agrawal – owner of a grocery shop. His statement is recorded on 10/09/2016. He stated that immediately police made inquiry from him, but he informed the police that as and when he will get time from his routine work, he will come to the police station for giving information with him. That is how, his statement shows that he ultimately visited the police station on 10/09/2016 and then his statement is recorded. *Prima facie*, it is seen that statement of Rajesh Agrawal – a grocery shop owner is highly artificial as he claims that he is having relevant information regarding the crime and has an audacity he tells that he will attend the police station as per his convenience. This witness then states that at about 10.00 p.m. on 01/09/2016, he had seen co-accused Rajesh carrying a cardboard carton on his shoulder and walking towards the protection wall of the railway. He further stated that other accused including the present applicant were following him. Viewed from the physic of the deceased, this statement will have

to be judged. Rajesh Agrawal has not stated that the co-accused Rajesh was being helped by any other person in carrying the cardboard carton. This witness further stated that on reaching at the railway protection wall, co-accused Rajesh threw that cardboard carton over the railway protection wall. Whether a single person can lift, carry and throw a cardboard carton containing a dead body is a question of fact, which will have to be examined at the trial.

8 Though a witness named Chandra has stated that the present applicant along with co-accused has purchased five bottles of strong beer for committing a crime in question by intoxicating the deceased, postmortem report does not show that stomach contains of the deceased were having any abnormal smell. On the contrary, autopsy surgeon has recorded that its containss are intact 150 cc semi-digested unidentified material without any peculiar smell.

9 Except this, there is hardly any material against the present applicant to connect him with the crime in question. It includes a recovery of a nylon rope at his instance.

10 Considering nature of evidence available against the present applicant, after filing of the charge-sheet, his further pre-trial detention is not warranted. Therefore, the Order :

- (i) The application is allowed.
- (ii) The applicant/accused in Crime A-155 of 2016 registered with Vasai Road Railway Police Station for offences punishable under Sections 302, 120-B and 201 read with Section 34 of the Indian Penal Code simple imprisonment is directed to be released on bail on his executing P.R.Bond in the sum of Rs.25,000/- and on furnishing one or two solvent surety in the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence.
- (iv) 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.

(A.M.BADAR J.)