

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1762 OF 2017

VIJAY PRAKASH KULKARNI @ BUVA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pawan Mali, Advocate for the Applicant.

Ms.J.S.Lohokare, APP for the Respondent - State.

Mr.Narayan Turkunde, Police Sub-Inspector, Sewree Police Station, Mumbai, present in court.

CORAM : A. M. BADAR, J.

DATE : 11th OCTOBER 2017

P.C. :

1 The applicant / accused no.4 Vijay Prakash Kulkarni @
Buva – an accused in Crime No.67 of 2016 registered with Sewree
Police Station, Mumbai, for offences punishable under Sections
302, 120B of the Indian Penal Code (IPC) and Sections 3, 4, 25
and 27 of the Arms Act, as well as under Section 37 of the
Maharashtra Police Act, by this application is seeking his release
on bail during pendency of the trial.

2 Heard the learned advocate appearing for the applicant / accused no.4 Vijay Kulkarni. He argued that there is no iota of evidence to connect the applicant / accused with the crime in question. According to the prosecution case, the applicant / accused had hatched conspiracy to eliminate Sushant Ghodekar @ Bunty and entrusted this work to co-accused for materialising the end result of the conspiracy. To support the prosecution case, the prosecution has placed on record Call Details Record with an allegation that the applicant / accused has made four phone calls to co-accused during the course of murderous assault on deceased Sushant Ghodekar @ Bunty, but there is no evidence to show that the cell phone number in question was owned by the present applicant / accused. Co-accused Atul has been identified in the Identification Parade as assailant of Sushant Ghodekar @ Bunty. The cell phone having so called number is not recovered by the prosecution.

3 The learned APP opposed the application by contending that on earlier occasion, at the instance of present

applicant / accused, co-accused Atul had attempted to commit murder of Sushant Ghodekar @ Bunty and accordingly, Crime No.255 of 2015 came to be registered with Byculla Police Station. The applicant / accused is having criminal antecedents and four criminal cases are pending against him.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet. On 20th July 2016, Police Sub-Inspector Nilesh Chavan of Sewree Police Station received information that there is firing at Ghodbunder area behind Hyundai Company and therefore, he rushed to the spot. He found one person lying dead with stab injuries as well as fire arm injuries on his person. Police Sub-Inspector Nilesh Chavan then went to lodge a report. At that time, Nandkumar Gopale, Police Inspector of Byculla Police Station informed Sewree Police Station that Ajit Warpe has also lodged a report informing that Sushant Ghodekar @ Bunty is killed by accused no.1 Atul @ Sushil and two unidentified persons.

5 After registration of the First Information Report (FIR), investigation followed. Investigator has concluded that accused no.1 Atul @ Sushil, accused no.2 Akhilesh @ Suraj Gavli and accused no.3 Mohd. Hanif Shaikh are employees of applicant / accused no.4 Vijay Kulkarni @ Buva. According to the prosecution case, applicant / accused Vijay Kulkarni @ Buva hatched a conspiracy and entrusted role to each co-accused for eliminating Sushant Ghodekar @ Bunty. The motive behind this, according to the prosecution case, is to the effect that deceased Sushant Ghodekar @ Bunty was earlier employed by the applicant / accused in his work as a Parking Contractor. However, Sushant Ghodekar @ Bunty was in a habit of drinking liquor and he used to extort money from truck owners as well as cleaners.

6 Call Details Record placed with the charge-sheet show that there were four calls to the cell phone of Atul @ Sushil from the cell phone having no.918108050272 during the course of murderous assault on Sushant Ghodekar @ Bunty. However, the charge-sheet does not contain any evidence to show that this cell

phone belongs to the present applicant / accused. Except this, there is no other prima facie evidence to connect the applicant / accused with the crime in question. True it is, that the applicant / accused is having criminal antecedents, but in the wake of this position in respect of evidence against the applicant / accused, so called criminal antecedents are of no consequence, so far as question of protecting liberty of the applicant / accused is concerned. As such, the following order :

ORDER

- i) The application is allowed.
- ii) The applicant / accused in Crime No.67 of 2016 registered with Sewree Police Station, Mumbai, for offences punishable under Sections 302, 120B of the Indian Penal Code (IPC) and Sections 3, 4, 25 and 27 of the Arms Act, as well as under Section 37 of the Maharashtra Police Act, is directed to be released on bail on his executing P.R.Bond in the sum of Rs.30,000/-, and on furnishing 1 or 2 surety/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 shall attend the Sessions court in which sessions case against him is pending for trial, on each and every date of hearing.
- v) The application is accordingly disposed of.

(A. M. BADAR, J.)