

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2268 OF 2017

Ramavatar Chhotelal Sharma	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Vedchetan Patil for the applicant.
Mr. S.V.Gavand,APP for the State.

CORAM: A.M. BADAR, J.
DATED: 9th NOVEMBER 2017

PC:-

1. The applicant/accused in Crime No.89 of 2016 arising out of the Crime No.I-86 of 2016 registered with Arnala Police station, for the offence punishable under Sections 302, 201, 364-A, 386, 109, 120-B r/w 34 of the Indian Penal Code, of by this application is seeking his release on bail during pendency of the trial.

2. Hard the learned advocate for the applicant at great length of time. The learned advocate for the applicant argued that the entire case of the prosecution is based on circumstantial evidence. It is very weak against the present

applicant. The story of the prosecution is totally suspicious and the applicant is obviously seems to have falsely implicated in the crime in question. The learned advocate argued that entry register of the same building is not produced with the charge-sheet to show that the applicant had entered in the building, where the crime in question allegedly took place. The voice panchnama shows that the applicant had conversation with the deceased and disclosed the deceased that he is going Bhoisar and as such the applicant was not present on the scene of occurrence at the time of the occurrence. By drawing my attention to the statement of Santoshkumar Pande, driver of the cab, the learned advocate pointed out that his statement reveals that initially there were two persons and one person met those two persons. At Kashimira only one bag is shown to have been disposed of by this statement of Santoshkumar Pande. The learned advocate further drew my attention to the recovery panchnama to point out that it reflects purchase of bags by accused No.1 Mohitkumar Bhagat and as such the applicant was in no way

concern with disposal of the dead body. The learned advocate drew my attention to the statement of witness named Ankit Varma to show that according to the prosecution case, the applicant contacted Ankit Varma on 17.5.2016 at about 7.30 p.m. and told him that as the bike ran out of the petrol, it be kept with Ankit Varma. With the aid of this statement, the learned advocate argued that this statement cannot be used for raising the inference that the said bike was used by the applicant on 16.5.2016 for purchasing the petrol for burning the dead body on 16.5.2016. It is further argued that the accused No.1 Mohitkumar Bhagat is friend of the present applicant, who is arraigned as accused No.2. Accused No.1 Mohitkumar Bhagat was also friend of deceased Kavita Ashok Badala. Statement of Deepak Gosavi shows that accused Mohitkumar Bhagat and the deceased were in the business of multi level marketing. The applicant/accused No.2 Ramavtar Sharma was new enterer in the said business. Statement of Deepak Gosavi explains the findings of documents belonging to the applicant at the place of the alleged incident. My

attention is drawn to the statement of Manish Singh, driver of the cab to point out that his statement shows that inmates of that cab were very alert according to the case of the prosecution. Discrepancies in the date of arrest was also pointed out apart from pointing out that there was recovery of two cell phones after intercepting the vehicle. Naturally, those two cell phones were belonging to the applicant and accused No.3 Shiva Sharma. According to the prosecution the applicant and accused no.3 Shiva Sharma case were apprehended by intercepting the car. In such a situation, according to the learned advocate appearing for the applicant/accused No.2 statement of Manish Singh, driver of the cab appears to be highly artificial as he has stated that one of the passenger alighted from the cab, called him and asked him to give the cell phone to the another passenger sitting in the cab. With this, the learned advocate for the applicant argued that considering the scanty evidence against the applicant/accused, he be released on bail during the pendency of the trial.

3. The learned APP opposed the application by drawing my attention to the missing report, the FIR as well as the panchanama and statement of a witness named Sachin Mahadik and argued that this evidence forms a complete chain for discarding every hypothesis of innocence of the applicant in the crime in question. The learned APP argued that chain of circumstantial evidence is complete and no link there of is missing.

4. I have carefully considered the rival submissions and also perused the entire charge-sheet. According to the prosecution case, as reflected from the charge-sheet, Kavita Badala (since deceased) was residing with her father i.e first informant Kishanlal Kothari. She left the house on 15.5.2016 telling inmates of the house that she is going to the Global city at Virar. She did not return home. Therefore, her sister lodged the missing report on 16.5.2016.

5. The FIR made by Kishan Kothari-father of the missing person Kavita Badala shows that from 17.5.2016 he started receiving telephonic calls demanding ransom of Rs.30 lakh in cash and 3 kg gold for return of his daughter Kavita Badala. The extortionist were threatening that if the amount and gold as demanded is not paid then he will get the dead body of his daughter Kavita. The extortionist informed the first informant that he should start with the ransom in a vehicle towards Surat side and he will be given subsequent instructions on the way.

6. The panchnama dated 18.5.2016 shows that on receipt of the first information regarding the offence, the police decided to lay a trap for apprehending the extortionist. The first informant was asked to accompany one of the three teams formed by the police with a bag containing bundles of papers for handing over the same to the extortionist for seeking release of his daughter.

7. The panchnama dated 18.5.2016 shows that first informant Kishanlal Kothari sat in the vehicle driven by police Nike Dorkar with Police Sub Inspector Dattaprasad Shendge sitting in that car with police personnels as passengers. Panchnama shows that during his journey, the first informant started getting several calls from the extortionist at short intervals asking him to drive on the way told by them. Accordingly, the car was being driven in circuitous routes suggested by the extortionist. Ultimately, at about 5.00 p.m. on that day the extortionist directed the first informant to take a U turn from Talasari and to drive the car towards the direction of Mumbai. At about 5.40 p.m. of that day, the first informant was asked to alight from the car and carrying the bag containing the ransom. Then as directed by the extortionists, the first informant Kishanlal Kothari delivered the bag to the inmates of white coloured car bearing Registration No.NH-48-F-1185, which approached him at about 5.55 p.m. The first informant then immediately transmitted pre-arranged signal. The hot chess of the car in

which the extortionist approached the first informant then begun. Ultimately, the car came to be intercepted at Charoti naka at about 6.30 p.m. The police team nabbed the present applicant/accused No.2 Ramavatar as well as accused No.3 Shiva Sharma being inmates of that car. Bag containing bundles of papers delivered by the First Informant came to be seized from both of them apart from two cell phones.

8. Statement of Sachin Mahadik shows that on 15.5.2016 at about 12.15 p.m. accused No.1 Mohitkumar Bhagat, applicant/accused No.2 Ramavatar Sharma and accused No.3 Shiva Sharma alighted from the building. Accused Mohitkumar and applicant Ramavatar were carrying blue coloured bag which was having heavy material in it. Statement of this witness shows that accused Shiva was carrying red coloured bag with him. They left the spot in a grey coloured car. Statement of Santosh, driver of that cab discloses what happened subsequently.

9. During the course of the evidence, ultimately it is found that accused persons had committed murder of Kavita Badala on 15.5.2016 itself. Role attributed to the present applicant is holding legs of the deceased, while accused No.1 Mohitkumar Bhagat constricted her neck.

10. In the light of this evidence connected by the prosecution, at this pre-trial stage, it is not possible to consider submissions advanced by the learned advocate for the applicant in order to come to the conclusion that there is no sufficient evidence to connect the applicant with the crime in question. Ultimately, he was found to be in company of the co-accused and carrying the bag which according to the prosecution case was containing dead body of Kavita Badala. The applicant is a person, who was found to have received bag from the first informant containing the amount of ransom. The panchnama shows that there was frequent calls to the first informant giving him direction regarding the route. Ultimately, he was contacted by the white car in which the

present applicant was there in company of the co-accused. In the wake of this evidence, no case for bail is made out. Therefore, the application is rejected.

(A.M. BADAR, J)