

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2336 OF 2017**

Hemant Dinesh Shetty .. Applicant
vs
State of Maharashtra .. Respondent

Mr.A.P.Mundargi Sr.Advocate I.b
Ms.Shraddha Sawant for Applicant
Mr.S.R.Agarkar APP for State
Mr.P.C.Barpade P.C. from Panchavati police station present

Coram : A.S.GADKARI, J

Date : 16th NOVEMBER 2017

P.C.

This is an application under section 439 of Cr.P.C. for bail in C.R.No.I-208 of 2017 registered with Panchavati Police Station for the offence under sections 302, 364, 201 and 120 (b) of Indian Penal Code.

2. Heard Mr.Mundargi the learned Senior counsel, learned APP and also perused the entire charge sheet,

3. It is the case of the prosecution in brief that the Applicant was having enmity with deceased-Jalinder Ugalmugale on account of conducting a social club and therefore, the Applicant in conspiracy with other accused persons committed murder of Jalinder

Ugalmugale on and after 1.10.2015 and thereafter screened/destroyed the evidence. The First Information Report is lodged on 23.5.2017. During the course of the investigation, the Applicant came to be arrested on 21.5.2017 and after completion of the investigation, police have submitted charge sheet.

4. The record indicates that the deceased-Jalinder Ugalmugale was having criminal antecedents to his discredit and many a times used to reside out of his house for two to three days. That on 1.10.2015 he left his residence in the company of one Rohit V.Kadale (Accused no.5) and Avinash M.Kaulkar (Accused no.6 /Juvenile accused) and did not return. The wife of the deceased Smt.Sunita Ugalmugale therefore, lodged a missing report on 4.10.2015 with Panchavati police station. In the said missing complaint, the statement of the father of the deceased was recorded. No suspicion was raised against anybody by the family members of the deceased. Prior to it on 3.10.2015, a dead body of an unknown person was found within the jurisdiction of Ghoti police station, Nasik. The police registered A.D.R. No.60 of 2015 as nobody claimed

the dead body of the said unknown person for a considerable period. The police attached to Ghoti police station after following due process of law disposed of the dead body of the said unknown person. That the relevant and necessary parts/specimen from the dead body were preserved by the police for conducting DNA test.

5. The record further indicates that C.R. bearing no. 196 of 2017 is registered with Panchavati police station District Nasik under sections 143, 145, 147,148,149,452 of IPC and during the course of investigation of the said crime, Rohit Kadale (Accused no.5) and Avinash Kaulkar (Accused no.6) were arrested by the police. That the said two accused persons during their custodial interrogation in C.R.No.196 of 2017 revealed the fact that in the year 2015 on 1.10.2015 they lured the deceased-Jalinder and have committed his murder at Ghoti. That when the accused persons were travelling with the deceased in a Maruti swif, car, initially they strangulated him and subsequently they assaulted him with a chopper and with a view to destroy the evidence they poured petrol on the dead body and ignited it.

6. The record further indicates that after the said revelation made by the co-accused Rohit Kadale (Accused no.5) and Avinash Kaulkar (Accused no.6) the present crime came to be registered. The First Information Report is lodged by a Police Officer attached to Panchavati police station, Nasik on 23.5.2017.

7. The prosecution has propounded three major circumstances against the Applicant namely:

- (i) Motive,
- (ii) Accused no.2 Rakesh Koshti is the associate or is a close acquaintance of the Applicant and,
- (iii) Accused no.8-Gopal Gosavi the Personal Assistant of the Applicant was in constant touch with the accused no.2 Rakesh Koshti prior to and after the commission of the said offence i.e. before and after 1.10.2015.

8. As far as the first circumstance 'motive' is concerned, the wife, mother and brother of the deceased-Jalinder have stated about the quarrel and/or enmity between the Applicant and deceased-Jalinder over conduction of a social club. A witness who was a friend of the deceased has also stated about the same and has further stated that the deceased had expressed his apprehension that, the Applicant

may eliminate him. Thus, the prosecution has placed sufficient material on record to infer that the Applicant was having motive to commit the murder of the deceased-Jalinder.

9. The second circumstance 'that Accused no.2- Rakesh Koshti was having close acquaintance with the Applicant was brought on record by the statement of mother of the said Accused no.8-Rakesh Koshti wherein she has stated that the said Rakesh Koshti was arrested in a case under M.C.O.C Act and the present Applicant had helped him in the litigation for his release on bail.

10. The third circumstance that the 'Accused no.2 Rakesh Koshti was in constant touch from his mobile phone with accused no.8-Gopal Gosavi who is the Personal Assistant of the Applicant prior to and after commission of the offence is concerned, *prima facie*, it appears that the said circumstance propounded by the prosecution is a weak piece of evidence qua the Applicant.

11. Thus, after analysing the material available on record, *prima facie*, it appears that except the circumstance of 'strong motive' there is no other material to connect the Applicant with the present

crime. As noted earlier, in the investigation of C.R.No.196 of 2017 the co-accused no.5 Rohit Kadale and No.6 Avinash Kaulkar during their custodial interrogation have revealed the commission of the present crime and till then the police could not detect it.

12. After taking into consideration, the afore stated facts and circumstances of the present case, this Court is of the view that the Applicant can be released on bail. Hence, the following order :

(i) The Applicant be released on bail in CR No.I-208 of 2017 registered with Panchavati Police Station on his furnishing PR bond of Rs.1,00,000/- (Rupees One lac) with one or two solvent local sureties in the like amount;

(ii) After his release from the jail, the Applicant shall attend the concerned police station on every 1st Monday of the between 10 a.m. to 2.00 p.m. for a period of six months and thereafter once in a month i.e.on every 1st Monday of the month till the conclusion of the trial;

(iii) Applicant shall attend all dates before the trial Court;

(iv) Any two consecutive defaults in complying with

aforesaid conditions will attract the provisions for cancellation of bail.

(v) Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

Application is allowed in the aforesaid terms.

(A.S.GADKARI, J)