

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

BAIL APPLICATION NO.2300 OF 2016

Dnyaneshwar Ramdas Landge
versus
State of Maharashtra

.... Applicant
... Respondent

.....

- Mr.Priyal Sarda, Advocate i/b. MaheshB. Zanwar, Advocate for the Applicant.
- Mr.Sooraj S. Hulke, APP for the State/Respondent.
- PI – Mr.D.P. Shinde, MIDC Bhosari Police Station, Pune.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 08th MARCH, 2017.

P.C. :

1. This application is moved for pre-arrest bail by the applicant/accused. The applicant/accused is prosecuted for the offences punishable under sections 363, 364, 365, 302, 201, 404, 411 r/w 34 of the Indian Penal Code in, who has investigated C.R.No.33/2014 of MIDC-Bhosari Police Station, Pune. The offence is registered at the instance of Dattatray Vitthal Zende on 18/02/2014.

2. It is the case of prosecution that deceased Kishor Dattatray Zende 43 years old was son of the complainant. On

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the night of 17/02/2014 Kishor Zende alongwith his friend Nagesh Shetty was chitchatting at the shop of one Choudhari, which was near one wine shop. At about 09.40 p.m. two persons were carrying bottle of liquor. At that time one person accidentally dashed Nagesh Shetti. Nagesh Shetti questioned him and there was some verbal altercation between those persons and Nagesh Shetti. At that time Kishor Zende was standing near those two boys. Other two persons were in a white colour car. As those two persons in the car proceeded towards Nagesh Shetty he ran away. Those four persons held Kishor and they started questioning about Nagesh Shetty. They asked him to show house of Nagesh Shetti and they forcibly put him in the car and went towards Landewadi, Pune. The friends of Kishor tried to chase the car. However they could not. Thereafter they informed this incident to the complainant, father of Kishor, who alongwith friends of Kishor tried to find out his son and tried to find out the white colour car. Whole night he was searching for his son. Thereafter he approached police on 18/02/2014 at around 10.00 a.m.

3. The police registered offence against unknown persons and initially registered case of kidnapping against the unknown

persons. However, on 19/02/2014 dead body of Kishor was found at the side of Alandi Road. Thereafter section 302 of the Indian Penal Code was added. The applicant/accused was arrested on 31/07/2014. Hence this bail application.

4. The learned counsel for the applicant/accused submitted that the applicant/accused is innocent. There is no nexus between the applicant/accused and the incident of kidnapping or murder. The learned counsel further submitted that there is no recovery of any article and whatever recovery is shown of gold chain is a bogus. He further submitted that the applicant/accused was not put for identification parade. There is no eyewitness to the incident of murder. There is no evidence against the applicant/accused to that effect. He further submitted that there is no evidence in respect of the car which was seized by police and the car which was borrowed by the applicant/accused from one Prashant Landage. The learned counsel further relied on the order dated 02/08/2016 passed by this Court while allowing Criminal Bail Application No.717/16 of co-accused Rajesh Jogesh Roy. He relied on the observations made by Honourable Lordship in that order and put question as to why the said applicant/accused Rajesh Roy was not subjected

to test identification parade. He further submitted that one ATM card was recovered at the instance of Rajesh Roy, though the ATM card of Kishor Zende was recovered at the instance of Rajesh Roy from cattle shed of Prashant Landage, the Court did not give much importance to the recovery as it was recovered from the open space. The learned counsel further prays parity and submits that the applicant/accused be released on bail, as he is in the prison since 31/07/2014.

5. The learned counsel further submitted that the statement of the father or any family member of the deceased identifying gold chain, is not furnished to the applicant/accused. He further submitted that the documents of the test identification parade of the applicant/accused is also not furnished, if it was conducted as submitted by the learned prosecutor. He insists that, his strong objection in respect of not furnishing documents to the accused on which prosecution relies, is to be noted.

6. The learned prosecutor opposed the application. He submits that it is the case u/s 302 of the Indian Penal Code in which the applicant/accused is involved. It is further relied on

the FIR. The statement of Nagesh Shetti and other witnesses who have seen the incident of verbal altercation near the wine shop, who have seen that four unknowns persons had forcibly taken Kishor on the night of 17/02/2014. He further relied on the statement of witnesses who have stated that it was a white colour Ritz Maruti car. The police have prepared panchanama of the car on 23/02/2014, which shows that white colour Ritz Maruti car, belonged to Wonder Car Showroom. He submitted that out of 4 persons, 2 are juvenile and they are arrested first at the instance of co-accused. He further relied on the statement of Prashant Landage, who had given his Ritz car in lieu of his car which was given to the showroom for servicing and repairs. Prashant Landage has stated that on 17/02/2014 his friend Dyaneshwar Landage had borrowed his car for marriage and next day the car was returned to him. The learned prosecutor further submitted that test identification parade of the applicant/accused was conducted. However, those papers are not before the Court and also they were sent to the Investigating Officer by the Tahasildar, who was arrested and now suspended under the bribery case and therefore the police office could not obtain the papers.

7. Perused the papers. Perused the statement of all the witnesses and also the order dated 02/08/2016 passed by my Brother Judge in B.A. No.717/16 granting bail towards accused Rajesh Roy. I am of the view that the parity cannot be given in this matter, as granting bail is a matter of discretion. There is no law as such. So also the evidence against the applicant/accused is different than the co-accused Rajesh Roy. There is evidence of altercation and kidnapping of deceased Kishor Zende. As the evidence of test identification parade against the applicant/accused, is not before the Court that cannot be considered and therefore at this stage, it is presumed that the applicant/accused was not subjected to identification parade. However, in the absence of such kind of identification, prima facie, there is substantial evidence against the applicant/accused.

8. The circumstance of borrowing car from Prashant Landage is a very important evidence and the description of the said car though number was not mentioned, was given by the eyewitness in their statement. In the panchanama of the car, description is given. Thus, there is very important nexus between the applicant/accused and the incident. Moreover, there is recovery of gold chain at the instance of the accused,

which took place on 05/08/2014 at the instance of the accused. The said chain was recovered from the cupboard of the applicant/accused. The said chain was further identified by the father of the deceased and statement to that effect is recorded.

9. This is a case of murder. The deceased was innocent and had no altercations or quarrel with the persons who pushed his friend Nagesh Shetti.
10. Considering this, I am not inclined to grant bail. The application stands rejected.
11. The application stands disposed of accordingly.

(MRIDULA BHATKAR, J.)