

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

CRIMINAL BAIL APPLICATION NO. 2371 OF 2016

Chintan Upadhyay. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Raja Thakare i/b. Mr. Bharat K. Manghani, advocate for applicant.

Mr. Anil G. Lalla a/w. Ms. Beerta H. Bajwa a/w. Ms. Zehra Kanji i/b. Lalla and Lalla, advocate for intervenor.

Mr. S.K. Shinde a/w. Ms. Veera Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : FEBRUARY 2, 2017**

P.C.:

1 Heard the learned Counsel for the applicant, learned Counsel for the intervenor and Learned APP for State. Perused papers of investigation.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicants herein is arrested on 22/12/2015 in Crime No. 444 of 2015 registered at Kandivali Police Station. The investigation is completed and charge-sheet is filed against the present applicant for offence punishable under section 302, 396, 201, 109, 120B read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 12/12/2015 the domestic help working with one Hema Upadhyay (a renowned artist) informed the police that she had left the house on 11/12/2015, as she was to collect evidence from the servant of her husband. The servant was aware that she was to meet her advocate Shri Bhambhani on that day. She had not returned home and that she could not be contacted on her telephone. A missing complaint No. 124/2015 was registered at Santacruz Police Station. The servant of Hema Upadhyay had also called upon her advocate and had learnt that the advocate also had left his house on 11/12/2015 alongwith Hema Upadhyay and had not returned home. A missing complaint was

registered at the instance of the daughter of advocate Mr. Bhambhani at Matunga Police Station bearing Missing Complaint No. 34 of 2015.

4 On 12/12/2015 at about 6.30 p .m. police of Kandivali Police Station had received an information that two huge brown paper corrugated were lying in drainage near the burial-ground road at Dahanukarwadi in front of Sheetal-Sameer Cooperative Housing Society. The police officer had rushed to the spot. Upon opening those two parcels, they had seen dead bodies of one female and one man. They had informed all the police station about the same. The police had learnt that two missing complaints were found in respect of a man and a woman. The servants were called and it was revealed that the dead bodies were of artist Hema Upadhyay and her lawyer who was representing her in the High Court, advocate Mr. Bhambhani. On the basis of the report, Crime No. 444/2015 was registered under section 302, 201, 34 of the Indian Penal Code against unknown person.

5 The applicant herein happens to be the husband of the deceased Hema Upadhyay. The applicant had got married to Hema Upadhyay on 31st October, 1998. It appears that a discordant note had struck between them and therefore, the applicant had filed a petition under section 13(1)(d) of Hindu Marriage Act before the Family Court at Bandra. On 29/10/2014 the decree of divorce was passed in favour of the applicant by the Family Court at Bandra. Family Court had directed the applicant to pay an amount of Rs. 16,51,805/- towards the various expenses incurred by the deceased Hema. It appears that on 3/1/2015, the applicant had deposited the amount as directed by the Family Court.

6 It appears from the record that being aggrieved by the decree of divorce Hema Upadhyay had filed Family Court Appeal before the High Court. That in the course of hearing of the Family Court Appeal, the applicant was directed to pay an amount of Rs. 40,000/- to Hema Upadhyay towards maintenance vide order dated 28/10/2015.

7 It appears that in the course of investigation, the investigating agency had traced the call details record of the deceased Hema Upadhyay and it had transpired that on the day of the incident i.e. on 11/12/2015 she had made calls to one Vidyadhar Rajbhar, who owned studio at Kandivali. Being an artist, Hema and the present applicant were acquainted with Vidyadhar Rajbhar. Investigating agency had reached the studio of Vidyadhar Rajbhar and it was found locked. The whereabouts of Vidyadhar Rajbhar were not known. On 13/12/2015, the applicant had attended the office of Crime Branch as he was telephonically called by the police. From 13/12/2015 to 22/12/2015 he had attended the office of the Crime Branch.

8 In the course of investigation, one Shivkumar Shivraj Rajbhar was arrested at Varanashi on 14/12/2015. It appears that in the course of interrogation of Shivkumar, he had led the investigating team to the other accused namely Pradeep Rajbhar, Azad Rajbhar and Viay Rajbhar. It is pertinent to note that Pradeep, Azad and Shivkumar were working with Vidyadhar Rajbhar and that is the

reason why they all were acquainted with Chintan and Hema. It appears that the applicant had given certain evasive answers in the course of investigation. The statements of the servants of Hema were recorded.

9 The statements of the wife and daughter of advocate Bhambhani were also recorded. It is pertinent to note that all of them knew that on 11/12/2015 Hema had received phone call from a person who had posed as the servant of the present applicant working with him at Jaipur and he had disclosed to Hema that he would supply to her relevant material against her husband Chintan, which she could demonstrate in the course of hearing in the high court. It was also disclosed by the said servant that the present applicant had illicit relations with three women and that he had videographed the same. Demand of Rs. 2 Lakhs was made by the said person for supply of the said material.

10 It appears from the statement of wife of advocate Mr. Bhambhani that Hema rushed to the house of the advocate asking as to whether the said material would be relevant in the course of hearing of the Family Court Appeal. In any case, it was agreed that they should go and collect the material and it was for this reason that the advocate Mr. Bhambhani had accompanied Hema and they had been to Kandivali. It is further pertinent to note that the dead bodies of Hema and advocate Bhambhani were found at Kandivali.

11 The investigating Officer had then arrested the present applicant on 22/12/2015. He was taken into custody and a diary was recovered under section 27 of the Indian Evidence Act from his house at Jaipur in which he had expressed his trauma, grievance against his wife, her brothers, relatives and her advocate. He had specifically expressed in the said diary that his life is made miserable by all these person and that if given a chance, he would destroy them. A noting is also found wherein, it appears that she had lodged a complaint against the applicant and had levelled allegations under section 292

of the Indian Penal Code, wherein she had alleged that the applicant had drawn objectionable and obscene images on the walls of the house, which would humiliate her. That the servant had started looking at her in an objectionable manner because of the said images. The grievance of the applicant was that instead of dismissing the servant, she had lodged a report against him, for which he had to obtain a bail. In short, there was an irretrievable break-down of marriage because of typical character of the applicant and objections raised by the deceased Hema.

12 The learned Counsel for the applicant has vehemently submitted that in fact, there was a decree of divorce in favour of the applicant. He had deposited an amount of more than Rs. 16 Lakhs. He had also appeared in the High Court pursuant to the notice issued by the High Court in the family court appeal. There were no relation between them and therefore, there was no reason for the applicant to take any grudge against his wife to such an extent that he would even remotely think of eliminating her existence.

13 As against this, the learned APP submits that the question is not of having motive but as on today, the compilation of charge-sheet would indicate that there is positive material on record which would clearly indicate that the applicant had hired Pradeep Rajbhar, Azad Rajbhar, Vijay Rajbhar and Shivkumar Rajbhar to eliminate his ex-wife Hema and her lawyer advocate Mr. Bhambhani. As far as Vidyadhar Rajbhar is concerned, he appears to have played a pivotal role in hatching the conspiracy. Non-bailable warrant is issued against Vidyadhar Rajbhar.

14 The learned Counsel for the applicant submits that according to the prosecution, the conspiracy was hatched at Chembur. He has placed implicit reliance upon the statement of the cab driver who has disclosed that on the relevant date i.e. on 8/12/2015 the applicant had been to Chembur near Diamond Gardens, Gulab View Society. The learned Counsel submits that it is surprising that they had to ask for the address of the diamond garden. It is submitted upon

instruction that a friend of the applicant namely Sanjeev Khandekar is residing in Gulab View Society and on that day, the applicant had been to the house of his friend. Upon instructions, it is also submitted that in the course of investigation i.e. between 13/12/2015 and 22/12/2015, the applicant had disclosed to the Crime Branch that he had been to meet his friend at Gulab View Society. That the statement of the said friend is also recorded, but the same does not find place in the compilation of the charge-sheet and therefore, according to the learned Counsel for the applicant, it is not a fair investigation and that the applicant has been made a scapegoat only because he had nurtured grudge against his ex-wife. It is also submitted that since the appeal was subjudiced, there was no reason for the applicant to eliminate her on any count.

15 As against this, the learned APP submitted that on 15/12/2015 the investigating officer has recorded the statement of the mother of Vidyadhar Rajbhar and that she had disclosed to the police that on 11/12/2015 Vidyadhar had made telephonic call to her and informed

her that he had killed Hema at the instance of Chintan Upadhyay and that he was proceeding towards Kandivali Police station to surrender. The learned Counsel for the applicant has vehemently criticised the said extra judicial confession and has submitted that it is not only improbable but it is unbelievable that the mother would make any statement to the police against her own son. It is a matter of evidence and the same cannot be criticised at this stage. In all probabilities, a fair statement was made by the mother.

16 The learned APP has also drawn attention of this Court to the statement of the daughter of advocate Mr. Bhambhani as well as the statement of the servant of the deceased Hema. Both of them have disclosed that during the period i.e. on 11/12/2015 to 12/12/2015, the applicant had made several calls to daughter of advocate Mr. Bhambhani as well as to the servant of deceased Hema to enquire as to whether they had returned home. The learned APP submits that this would reflect upon the conduct of the applicant and the same may be considered at the time of trial under section 8 of the Indian

Evidence Act. As against this, the learned Counsel for the applicant submitted that since the servant of the deceased Hema had called upon him that she had not returned home, he had kept on calling them and there was no mens rea to call upon them.

17 According to the learned APP, the most relevant material against the present applicant is the statement of accused Pradeep Rajbhar which is recorded under section 164 of the Code of Criminal Procedure, 1973. The said statement was recorded on 8/3/2016 i.e. practically 3 months after the arrest of the applicant. Pradeep Rajbhar has stated on oath that in fact, he had no work at the relevant time and had sought some help from the present applicant. He was called to Mumbai through Vidyadhar Rajbhar and others. He was directed to make a phone call to Hema posing himself as ex-servant of the applicant and inform her that he has videographed material, which she could rely upon in the course of hearing before the High Court. Pradeep has narrated the entire plot which was hatched by Chintan Upadhyay through Vidyadhar Rajbhar and others.

18 The learned Counsel for the applicant submits that while considering the application under section 439 of the Code of Criminal Procedure, 1973, it would not be relevant to consider the said confessional statement for the simple reason that as on today, the said confessional statement has been retracted by Pradeep.

19 It is true that the evidentiary value of the said statement can be considered at the time of trial under section 30 of the Indian Evidence Act is to be decided at the stage of trial.

20 As on today, there is more than sufficient material to indicate that the applicant herein had not only nurtured grudge against his ex-wife but had expressed himself in the diary written by him that if given an opportunity, he would eliminate them.

21 The other most relevant material would be that during the pendency of the divorce proceedings and even after that, the

applicant had never resided in the flat at Juhu till December, 2015. However, just before the incident i.e. during the period 1/12/2015 to 8/12/2015 he was residing in the said flat. He had painted objectionable images on the walls. That Hema had suspected his behaviour during the period 1/12/2015 to 8/12/2015. The servants had disclosed that while leaving the house he was deliberately bidding good bye to Hema and others repeatedly. The material collected in the course of investigation would reflect on the conduct of the applicant before and after the incident.

22 It is clear that at his instance Pradeep had called upon Hema by posing as servant of Chintan. This is not simply a case of conspiracy but a case of contract killing/hired killing and therefore, the fact that on the day of incident applicant was not in Bombay would lose its significance and relevance. Hence, the applicant does not deserve to be enlarged on bail at this stage.

23 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)