

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 6 OF 2018***

Subhash Bhikanmahato Yadav	Applicant
Versus	
The State of Maharashtra	Respondent

Mr. Anand S. Pandey, for the applicant.
Mrs. Veera Shinde, APP, for the State.

***CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 20th February, 2018.***

P.C. :

1. Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 13.12.2016 in Crime No.36 of 2016 registered at Tala Police Station, Dist. Raigad for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed against the applicant and all other accused for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code on 19.1.2017.

2. It is the case of the prosecution that on 22.10.2016, one Ganesh Mandal lodged a report at the police station that he is a builder by profession. He used to engage labour on daily wages. He was acquainted

with one Mohd. Nazim, who was also a builder by profession. They used to exchange labours amongst themselves. The first informant was acquainted with Samrulhaq, Kaisar, Subhash i.e. the present applicant and Pintukumar Sav. They all worked with Mohd. Nazim as well as the first informant on 21.10.2016. The first informant had called upon Pintukumar Sav and Rakesh Waghmare to erect two poles near the Marathi School. he had also called upon Pintukumar Sav to visit his house and had taken the motorcycle. Thereafter, they had visited the hotel of Babu Vasavare for having a cup of tea. Pintukumar Sav had informed the first informant that he has to leave for his home town immediately due to some urgent work. Thereafter, an unknown person had enquired about Mohd. Nazim. He was informed that Mohd. Nazim is missing since two days. Immediately he was informed by his one of the labours that Mohd. Nazim had accompanied Pintukumar Sav and two other labours 3 days ago. They had enquired with Pintukumar Sav and he disclosed that 2 days ago, Samrulhaq had approached him for some work. He had insisted upon him to stay with him. On 20.10.2016, Samrulhaq met him and offered him to join a party at Bamanghar Road. They had been to the party. There they had consumed beer and alcohol. Thereafter, they had taken Mohd. Nazim to the forest

area where Kaiser and Subhash had assaulted him initially with an empty beer bottle. Kaiser had disclosed that the cause of assault was that Kaiser had illicit relations with the wife of Mohd. Nazim and that he is creating obstruction.

3. It is pertinent to note that the said disclosure was made prior to registration of the FIR, rather the first information report was based upon the extra judicial confession made before the first informant by the co-accused.

4. The learned APP has submitted that since the extra-judicial confession was made to the first informant prior to registration of offence and not in the presence of police, the said submission would not be hit by section 25 of the Indian Evidence Act. It is also submitted by the learned APP that statement of Pintukumar Sav has been recorded under section 164 of Cr.P.C. and that the same would be admissible under Section 30 of the Indian Evidence Act.

5. Perused the statement of Pintukumar Sav recorded under Section 164 of Cr.P.C. He has categorically stated before the learned Magistrate that on 21.10.2016 at around 7 p.m. he had been to the forest along with Samrulhaq. There he had seen Mohd. Nazim in the company

of Kaiser and Subhash. They all were under the influence of alcohol. They had offered drinks to the witness Pintukumar Sav. All of a sudden, Kaiser had assaulted Mohd. Nazim with the beer bottle followed by an assault by the present applicant with the bottle. The eye-witness Pintukumar Sav fled from the spot. He was abused by Samrulhaq. He has specifically stated that since he was threatened by Samrulhaq, he continued to wait on the spot and saw that the present applicant had held Mohd. Nazim in order to facilitate Kaiser to slit the throat of Mohd. Nazim. He has specifically stated that thereafter he had also held the body of Nazim, Samrulhaq had caught hold of the legs and thereafter, the body was dragged upto 20 to 30 feet inside the Tala forest by all the four accused. He was threatened by the co-accused of dire consequences. It is stated that Subhash had helped Kaiser to assault Mohd. Nazim since he was to be paid Rs.25,000/- for assisting him in assaulting Mohd. Nazim. In short, the applicant had acted as a hired killer.

1. The learned counsel for the applicant vehemently submits that the confessional statement of the co-accused cannot be taken into consideration since the co-accused has made a inculpatory statement as far as his own role is concerned. The same would be a matter of appreciation

of evidence. As on today, even 164 statement of Pintukumar Sav would show that he had assisted Kaisar and Subhash along with Samrulhaq in causing disappearance of evidence and, therefore, he would be co-accused liable for an offence punishable under Section 201 of IPC. In any case, the first information report itself is based on an extra-judicial confession which was made prior to registration of the offence. The learned counsel submits that the co-accused Samrulhaq Shaikh has been enlarged on bail by this Court and by virtue of doctrine of parity would also be entitled to the same.

6. It is clear from the record that the role assigned to Samrulhaq was similar to the role assigned to Pintukumar Sav. whose statement under Section 164 of Cr.P.C. is recorded. Samrulhaq had assisted the principal accused Kaisar and Subhash in causing disappearance of evidence and not in causing fatal injuries on the person of Mohd. Nazim.

7. It is pertinent to note that the column No.17 of the post-mortem notes would show 5 incised/stab wounds. Pintukumar and Samrulhaq were not armed with any weapon. Injury No.1 is a slit injury on the neck and the body was discovered at the instance of Pintukumar Sav. There are incised wounds on other parts of the body, including a stab

wound on hypochondrial region from the right nipple to the umbilicus. the cause of death is shock due to injuries.

8. In the abovementioned facts, this Court is of the opinion that the applicant does not deserve to be enlarged on bail. The application being sans merits, stands rejected.

9. The observations made hereinabove are restricted to an application under Section 439 of Cr.P.C. and the learned Sessions Judge shall not be influenced by the same at the time of trial.

(SMT. SADHANA S.JADHAV, J.)