

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

CRIMINAL BAIL APPLICATION NO. 31 OF 2018

Chandan Vishnu Gaikwad	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. B.G. Tangsali for the applicant.
Mr. R.M. Pethe, APP for the Respondent-State.
Mr. S.L. Bhalerao, Manpada Police Station is present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 15th OCTOBER, 2018.**

P.C.

1. This is an application for bail in connection with C.R. No. I-454 of 2016 registered with Manpada Police Station. The offences were registered under Sections 302, 397, 120(B), 414, 201 of Indian Penal Code and Section 4, 25 of the Arms Act and Section 37(1)(3), 135 of the Maharashtra Police Act.

2. Prosecution case is that dead body of the deceased was found in car bearing No. MH05 AS-4555. There were injuries on his person. It is further alleged that deceased was having illicit relationship with wife of the accused No.1. The deceased and accused No.1 were in the same car which was seen in the CCTV footages. It is alleged that another car which was allegedly driven

by the applicant (accused No.2) was following the car of the deceased and accused No.1. The CCTV footage indicates that accused No.1 and deceased were together at one point of time. The accused No.1 had alighted from the vehicle and were seen at petrol pump making some gestures. It is alleged that applicant No.1 was giving directions to accused No.2 who was in the car which was following them and subsequently the deceased was liquidated. The prosecution case is that the deceased was assaulted by knife and there were injuries on his throat. This is supported by the Postmortem report. The accused No.1 was arrested during the course of investigation. The involvement of the applicant/accused was disclosed. The applicant was therefore arrested on 12th September, 2016. On completing the investigation, the chargesheet has been filed.

3. Learned counsel for the applicant submitted that there is no eye witness to the incident and the prosecution is relying on the circumstantial evidence. It is submitted that there is no incriminating recovery at the instance of the applicant. The knife allegedly used in assaulting the deceased is not recovered from the applicant. There is no other corroborative evidence to establish the complicity of the applicant in the alleged crime. It is submitted

that CCTV footage relied upon by the prosecution is not a cogent evidence to show the involvement of the applicant. It is further submitted that except relying upon the statement of the co-accused and the inference drawn by the prosecution about involvement of the applicant, there is no strong evidence to establish the case against the applicant. It is further submitted that there is recovery of mobile phone from the applicant, however, the panchanama does not indicate the simcard number of the said cell phone and thus there is no evidence to show that applicant was in possession of the alleged mobile and there was any conversation from the cellphone which was allegedly recovered from his possession. It is thus submitted that only on such evidence, the applicant may not be detained further. The applicant is in custody since two years. There are no criminal antecedents against him.

4. On the contrary, the learned APP vehemently submitted that there are strong circumstance to show the involvement of the applicant in the crime. Deceased was the cousin of accused No.1. The presence of accused No.1 with deceased is established by cogent evidence. The CCTV footage shows the movement of the car in which the deceased and accused No.1 were travelling. They

were followed by another car. It is the prosecution case that applicant was travelling in the car which followed the car of accused No.1 and deceased. CCTV footage shows that accused No.1 was making certain gestures to accused No.2. The inference can be drawn that the accused No.1 was giving direction to other accused to follow them. It is submitted that the car in which accused No.1 and deceased were travelling was identified by the witnesses. The other car in which accused No.2 was travelling was also identified. Blood stains were found on the steering of the car driven by the applicant/accused. It is further submitted that evidence collected by the prosecution is sufficient to show the involvement of the applicant. CA report of blood stains on the car allegedly driven by the applicant shows that it is a human blood. It is further submitted that involvement of the other accused is also established from the fact that accused No.1 was allegedly sitting on the front seat next to the deceased and it would not be possible for him to assault the deceased alone taking into consideration the nature of injuries sustained by deceased. Thus, there was involvement of the another person and the applicant is that the said person who assaulted the deceased by using knife.

5. I have perused the chargesheet. The incident had occurred

during intervening period between 8th to 9th September, 2016, the dead body of the deceased was found in the car. The case of the prosecution is based on the circumstantial evidence as there is no eye witness to the actual incident of assault. It is alleged that accused No.1 and deceased were travelling in the car which was followed by the applicant/accused. The prosecution has placed strong reliance upon the CCTV footage in which the second car is being visible following up the first car. The car in which the accused No.1 and the deceased were travelling was identified by the relative of the deceased. Said car belongs to deceased. However, while identifying second car from the CCTV footage the witnesses have stated that said car is similar to the car belonging to the applicant. Thus, there is no authentic evidence prima-facie that it is the car of the applicant and that he was travelling in that car. There is no recovery of knife from the applicant. The prosecution case is that blood stains are noticed in the car of the applicant. CA report indicates that it is a human blood but blood group was inconclusive. The CCTV footage indicates the presence of two cars upto a certain point and thereafter the alleged incident of murder has occurred which is not captured in any CCTV footage. Thus, there is no strong evidence to establish that the car

following accused No.1 and deceased was belonging to applicant and he was travelling in that car. CCTV does not indicate that the applicant had alighted from the car at any point of time and had any conversation with the accused No.1. The applicant is in custody since last two years.

6. Taking into consideration, the nature of evidence as stated herein above, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. Applicant is directed to be released on bail in connection with C.R. No. I-454 of 2016 registered with Manpada Police Station on furnishing P.R. Bond of Rs. 25,000/- with one or more sureties in the like amount;
- iii. Applicant shall attend the concerned Police Station once in a month on first Saturday between 10.00 a.m. to 12.00 noon till further order;
- iv. Applicant shall attend the trial Court on the date of hearing of the case unless exempted by the Court;
- v. Applicants shall not tamper with the evidence and/or pressurize the prosecution witnesses;
- vi. Criminal Bail Application stands disposed off.