

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

BAIL APPLICATION NO.576 OF 2018

Sayyad Zafar Rizvi alias Khatu	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

.....

Mr.Amol A. Patankar, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 28, 2018.

P.C. :

This is an application for bail in C.R. No.I-62 of 2017, registered with Kashimira Police Station, District-Thane. Applicant was arrested for the offences punishable under Sections 302, 364, 364(A), 365, 201, 342, 170, 323 and 506 read with 34 of Indian Penal Code (“IPC”, for short).

2 The case of the prosecution is that the alleged incident had occurred from 11th July, 2016. According to the prosecution, secret information was received by police that person namely, Sachin Mohite was abducted as there were disputes regarding return of money advanced to him. He was

murdered and his body is thrown in Surya river to destroy evidence. In pursuance to that decomposed body was recovered. ADR No.14 of 2016 was registered vide Section 174 of Cr.P.C. it was also learnt that Satyakumar, Sandeep Kumbhar, Kapil Jadhav, Mallya Barik and Aklag Hussain were interrogated and it was found that Satyakumar Paniavali @ Dhirenkumar Pillai @ Kumar as his associates invested Rs.39 lakhs with Sachin Mohite. The said amount and returns were not paid to them. Sachin Mohite was staying at Suna Lodge with his associates at Mira Road and they left the said hotel and Satyakumar and his associates felt that they are cheated. It was further revealed that Satyakumar and his associates had abducted Sachin Mohite (deceased), from Sunrise Hotel, Kashimira and he was taken to Royal Palms Aarey Colony, to the office of accused no.1 Satyakumar. It is further alleged that, in the said office, Sachin was assaulted by fist and kick blows by the accused and thereafter he was taken to R.K. Premier Hotel, Mira Road. The associates of Sachin Mohite, Shri Indrajit Singh was also brought to the said police. They were associated and realizing that he was dead, to destroy evidence body was thrown from the bridge in river at Manor. FIR was lodged on 11th February, 2017.

3 Learned counsel for the applicant submitted that two other accused are granted bail by this Court. He relied upon the orders passed by this Court in Bail Application Nos.2921 of 2017 and Bail Application No.2669 of 2017. The accused in the above applications were granted bail vide order dated 13th April, 2018 and 26th April, 2018, respectively. It is further submitted that the prosecution is relying on the statement of Indrajitsingh Kajale. His statement was recorded belatedly. There is delay in lodging FIR. No specific role is attributed to applicant. DNA Report does not match. No recovery from applicant. There was no money transaction between applicant and deceased. Co-accused Kapil. Jadhav is granted bail by Sessions Court. Charge - sheet is filed.

4 I have perused the order granting bail passed by this Court to the co-accused. Accused Amir Gulam-Rasul Tambe was granted bail by this Court, by order dated 13th April, 2018. Other accused Sandeep Popat Kumbhar was also granted bail on 26th April, 2018. It is pertinent to note that Amir Tambe was a person who was allegedly driving the vehicle in which Sachin was brought to R.K. Premier Hotel, and, thereafter, body was disposed of at Surya river. It was also observed that *prima facie* there are

certain discrepancies in the statements of Indrajit, Santosh Shetty and Laxmidhar Raut in respect to presence of the said accused. Santosh Shetty had not named him and no identification parade was held. DNA Report received does not show that the dead body was of Sachin Mohite. Applicant was also allegedly present at the place of assault and allegedly assaulted deceased with others. The alleged incident is stated to have taken place on 11th July, 2016 and 12th July, 2016. FIR was lodged on 11th February, 2017. The statement of Indrajeet Kajale was recorded on 19th April, 2017 i.e. after nine months of the incident and two months after registration of FIR. Although Indrajit Kajale is allegedly eye witness to the incident, he did not lodge complaint to police. Role attributed to Sandeep and applicant is similar. As noted above, there are discrepancies in evidence. Learned APP submitted that offence is serious. The accused had committed murder and threw the body of deceased in river. There is evidence of eye witnesses. However, infirmities are noted in the evidence of witnesses. According to Indrajit, he was also assaulted, but, he did not complain about the incident. FIR is based on hearsay evidence. It is not clear as to how the entire incident was disclosed to first informant through secret information. Statement of Laxmidhar Raut was recorded on 16th

February, 2017. He has not named applicant. There is no identification parade. Statement of Santosh Shetty was recorded on 20th February, 2017. He has not named applicant. There is no parade. Investigation is complete and charge-sheet is filed. There are no antecedents against applicant, Sandeep Kumbhar was allegedly present at the time of assault and has assaulted the deceased. Similar observations were made while granting bail to the accused. Witness Santosh Shetty has not named the applicant, and, there was no identification parade.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.576 of 2018, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.I-62 of 2017, registered with Kashimira Police Station, District - Thane, on his furnishing P.R. Bond in the sum of Rs.50,000/-, with one or more sureties in the like amount;

- (ii) Applicant shall attend Kashimira Police Station, District-Thane, on the first Sunday of every month between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- (iii) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) Applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) Applicant to cooperate with the conduct of the trial;
- (vi) Applicant shall file an undertaking with regard to Clauses (ii) and (v) in the trial Court, within two weeks of his release;

- (vii) If there are two consecutive defaults in appearing before the trial Court or in reporting to the investigating officer, and, if there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail;
- (viii) Bail Application No.576 of 2018, stands disposed of;
- (ix) It is made clear that the observations made herein are *prima facie*, and, the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order;
- (x) Parties to act on an authenticated copy of this order;
- (xi) Applicant is permitted to furnish cash security in the sum of Rs.50,000/- in lieu of cash surety, for a period of six weeks.

(PRAKASH D. NAIK, J.)