

Anand

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

BAIL APPLICATION NO. 751 OF 2017

Vijaykumar Ramadhar Rajbhar .Applicant

Vs.

The State of Maharashtra .Respondent

Ms Prabha Mane, Advocate, for the Applicant
Mrs. A. A. Takalkar, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 07.03.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No. 444 of 2015 registered with the Kandivali Police Station, Mumbai, for the alleged offences punishable under Sections 302, 396, 201, 109, 120B r/w 34 of the Indian Penal Code.

3. Learned counsel for the Applicant submitted that the allegations as against the Applicant are false and baseless. She submitted that the evidence as against the Applicant has been forged and

fabricated, to falsely implicate the Applicant in the said case. She submitted that although it is the prosecution case that co-accused – Chintan Upadhyay purchased the tempo in which the dead bodies of Hema Upadhyay and Advocate Bhambhani was carried, the record shows that the said tempo was purchased in 2011 by the Applicant himself. She submitted that when the Applicant was arrested, only Rs. 30/- was recovered from him. She further submits that if the CCTV footage timing and Mangesh Raut's statement is taken into consideration, there is a discrepancy in the timing, as to when the Applicant was seen near the tempo. According to the learned counsel, even the Leave And License Agreement has been fabricated by the prosecution. She submitted that there is no evidence of conspiracy nor are there any CDR records which point to the complicity of the Applicant. She submitted that considering the aforesaid, the Applicant be enlarged on bail.

4. Learned APP opposed the Application. She submitted that there is sufficient circumstantial evidence, showing the complicity of the Applicant. She relied on the statement of co-accused – Pradeep Rajbhar recorded under Section 164 of the Code of Criminal Procedure (for short 'Cr.P.C.') to show the complicity of the Applicant. She also

relied on the statement of Mangesh Raut as well as the CCTV footage collected, to show the Applicant's complicity in the alleged offences. She further submitted that the tempo in which the dead bodies of Hema Upadhyay and Advocate Bhambhani were transported as well as the car of Advocate Bhambhani was recovered at the instance of the Applicant. She submitted that the Forensic Science Laboratory's report (for short 'FSL' report) shows, that the hair and the blood samples collected from the car of Advocate Bhambhani were that of the Applicant. She submitted that hence, no interference was warranted in the impugned order rejecting the Applicant's Application for bail.

5. Perused the papers. According to the prosecution, on 12.12.2015, the domestic help of Hema Upadhyay informed the police, that Hema had left the house on 11.12.2015 to collect some evidence from someone. The domestic help was aware that Hema Upadhyay was to meet her Advocate Bhambhani on that day. Hema neither returned home nor could she be contacted on her mobile. Pursuant thereto, a missing complaint was registered with the Santacruz Police Station, Mumbai. Hema's domestic help called up her Advocate Bhambhani and learnt that the Advocate had also left his house on 11.12.2015 alongwith Hema and had not returned home. Accordingly, a missing complaint

was lodged by Advocate Bhambhani's daughter with the Matunga Police Station, Mumbai.

6. On 12.12.2015 at 6.30 p. m., Kandivali Police Station received information that two big brown boxes were lying in a drainage near the burial-ground at Dahanukarwadi, opposite Sheetal-Sameer Cooperative Housing Society. The police reached the said spot and on opening the two parcels, found two dead bodies, one of a female and one of a male. Accordingly, the police informed all the police stations about the same and learnt that two missing complaints were filed in respect of a man and a woman. The dead bodies were identified as that of Hema Upadhyay and her lawyer representing her in the High Court, Advocate Bhambhani. Pursuant thereto, the aforesaid C. R. being C. R., No. 444 of 2015 was registered as against unknown persons. The Applicant was arrested in the course of investigation on 15.12.2015. Co-accused Shivkumar Rajbhar was arrested on 14.12.2015 and in his interrogation, the names of other accused i. e. Pradeep, Azad and the present Applicant – Vijaykumar were disclosed and they were arrested. The statement of Pradeep Rajbhar recorded under Section 164 of Cr.P.C. clearly shows the complicity of the Applicant. Co-accused – Pradeep Rajbhar in his statement recorded under Section 164 of Cr.P.C. has in

detail set out how the alleged incident had taken place. Pradeep has narrated the details of how conspiracy was hatched by Chintan Upadhyay, Vidyadhar Rajbhar and others. He has stated that he & others were called to Mumbai by Vidyadhar; that he had called Hema Upadhyay posing as an Ex-servant of Chintan Upadhyay and had informed her that he had videographic material on which she could rely in the course of hearing before the High Court. He has set out in detail how Hema and Advocate Bhambhani came to Bansraj Art Company; how the Applicant and others held Hema and Advocate Bhambhani; poured something from the bottle on the handkerchief and made Hema and Advocate Bhambhani unconscious; how thereafter, the Applicant got a tempo and how the dead bodies were kept in the tempo; how the dead bodies were thereafter, disposed of by the Applicant and others near a nala etc.. Apart from the 164 statement, there is recovery of the tempo used in the commission of the offence i. e. to transport the dead bodies, as well as recovery of Advocate Bhambhani's car at the instance of the Applicant. The FSL report shows that the hair and blood samples collected from the car match the Applicant's hair and blood samples. The statement of witness - Mangesh Raut also corroborates the 164 statement of co-accused Pradeep Rajbhar, with respect to the presence of the Applicant near the tempo with two big boxes on 12.12.2015 at

about 00.15 a. m.. The CCTV footage also shows the presence of the Applicant alongwith other co-accused and both the deceased on 11.12.2015 from 8.40 p. m. to 9.00 p. m. and the presence of the Applicant and other co-accused on 12.12.2015 from 00.25 a. m. to 1.50 a. m..

7. Considering the aforesaid prima facie material against the Applicant, this is not a fit case to enlarge the Applicant on bail. The Application stands rejected.

8. 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.

(REVATI MOHITE DERE, J.)