

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

BAIL APPLICATION OF.1313 OF 2018

Dnyandev Dattatray Patil @ Raju
Patil

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. E.A. Sasi for the Applicant.

Mrs. J.S. Lohokare, APP for the Respondent -State.

Mr. Ajay Kadam, Asst. Police Commissioner, Crime Branch, Navi Mumbai, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th SEPTEMBER, 2018.

P.C.:-

This is an application under Section 439 of the Cr.P.C filed by the aforesaid Applicant (accused No.2), who has been arrested in C.R No.29 of 2017 registered with Kalamboli Police Station for offences punishable under Sections 201, 302, 323, 364, 497, 504 and 506(2) r/w. 34 of the Indian Penal Code.

2. Mr. E.A. Sasi, the learned counsel for the Applicant submits that there is no prima facie material to show the involvement of the Applicant in the aforesaid crime. He has submitted that statements of the driver and the other witnesses vis-a-vis CDR details at the most

would indicate that the Applicant was present at the place of the incident. He submits that 'common intention' cannot be inferred from mere presence at the place of the incident. Relying upon the decisions of the Apex Court in ***Raghubir Chand Vs. State of Punjab 2013 DGLaw (SC) 1487*** and ***Bhupendra Govardhanlal Sachdeva & Anr. vs. State of Maharashtra 2013 DGLaw (Bom) 2260*** he submits that section 34 of the IPC, which carves out an exception from general law that a person is responsible for his own act. To hold a person vicariously liable for the acts of others he has to share common intention to commit the offence, which implies that a pre arranged plan and acting in concert pursuant to the plan. The learned counsel for the Applicant submits that in the present case there is absolutely no material on record to prove that the Applicant was present at the time of the incident or that he had acted in furtherance of common object.

3. The learned counsel for the Applicant, placing reliance upon the decision in ***Ranchodbhai Manjibhai Chovatia and 1 vs. Pravinbhai Kalubhai Italia & 1 2016 DGLaw (Guj) 176*** submits that in order to attract the provisions of section 114 of the IPC there must be some material to show that there was abetment prior to commission of offence and the abettor was present at the place of the incident. He

submits that the Applicant is in custody since 10.12.2017 and that he contends that there being absolutely no material to show the involvement of the Applicant in commission of the crime.

4. Mrs. J. S. Lohokare, the learned APP submits that the case is based on circumstantial evidence. She further submits that there is prima facie material to show that the co-accused Abhay Kurundkar had committed murder of the deceased-Ashwini Bidre. She has submitted that the statement of the husband of the deceased prima facie reveals that the Applicant herein was known to the deceased and that he was aware of the relationship between the deceased and the accused No.1- Abhay Kurundkar. She has stated that the CDR records prima facie show that Co-accused -Abhay Kurundkar had made 8 calls to the Applicant herein on 11th April, 2016 between 10.17 to 11.28 hours and further two calls between 00.16 to 00.28 hours. She has further submitted that statement of Sanjay Savkare prima facie reveals that on receipt of the phone calls the Applicant had gone to Bhayender (East). She submits that the statement of the taxi driver and the other statements of the witnesses prima facie indicate that the Applicant was present at the place of the incident. She submits that the case is based on circumstantial evidence and this is not a stage where the material

on record can be appreciated. She submits that considering the nature of the offence and also considering the fact that the evidence of the material witnesses has not yet recorded, this is not a right stage to release the Applicant on bail.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The records prima facie indicate that the deceased-Ashwini was married to Raju Gore in the year 2005. In the year 2006 she was selected as Police sub-inspector and was posted at Pune. She was later on transferred to local crime branch-Sangli, where the accused No.1-Abhay Kurundkar was the incharge officer. It is alleged that there was illicit relationship between the accused No.1-Abhay Kurundkar and the deceased. The accused No.1 Abhay Kurundkar had promised to divorce his wife and marry the deceased Ashwini.

7. It is the case of the prosecution that Ashwini Bidre was pressurising the accused No.1 to divorce his wife and to marry her. She had also demanded that he should transfer his farm house in her name. This created a rift between them as a consequence thereof the

accused No.1 started abusing and assaulting the deceased. It is also alleged that the accused No.1 had threatened to kill the deceased.

8. It is alleged that on 11.4.2016 the accused No.1 took Ashwini to his house at Bhaynder (East). On 13.4.2016 and 14.4.2016 the accused No.1 sent false messages to the relatives of Ashwini from her cell phone stating that she was gone to Himachal Pradesh or Uttarakhand for meditation. The family of Ashwini initially believed that she had gone for meditation. On 10.5.2016 the father of the deceased-Ashwini received a phone call from the police department stating that Ashwini had not reported for duty since 15.4.2016. Shri Govindswami, the landlord also reported that Ashwini had not paid the rent since April-2016. The phone of Ashwini was switched off since 15.4.2016. The family of the deceased were unable to trace her and hence Anand Bidre, the brother of the deceased, lodged a missing report and further a criminal writ petition No.45 of 2016.

9. On 30.1.2017 brother of the deceased lodged the FIR, wherein he disclosed that Ashwini was having extra marital relationship with the accused No.1-Abhay Kurundkar. He also handed over the laptop of Ashwini, which contained video as well as audio

clip, indicating that the accused No.1 was abusing and assaulting the deceased Ashwini and that he had also threatened to cause her death. The brother of the deceased suspected that Abhay Kurundkar was involved in abducting Ashwini and hence he lodged the FIR against him. Based on the said FIR crime for offence under Sections 364 and other sections came to be registered. In the course of the investigation the accused No.1 and the Applicant came to be arrested. After filing of the charge sheet further investigation was carried out under Section 173(8) of the Cr.P.C. and the accused Nos.3 and 4 came to be arrested. The investigation revealed that the accused No.1, with the help of the other co-accused had killed Ashwini Bidre, cut her body into pieces, which were put in plastic/gunny bags and later disposed off in Vasai Creek.

10. The material on record prima facie indicates that the deceased-Ashwini was in the company of accused No.1-Abhay Kurundkar on 11.4.2016 and thereafter she was not traceable, thus indicating that she was killed during the intervening night of 11th and 12th April, 2016. The statements of Rampati Dube, the taxi driver and Kiran Mahajan as well as the CDR records prima facie reveal that during the intervening night of 11th /12th April, 2016 the Applicant

had received several calls from the accused No.1. The CDR records also indicate that during this time the location of the cell phone of the accused No.1, the deceased as well as the Applicant was at Mira Bhayander, near the house of the accused No.1.

11. The records thus prima facie indicate that the accused No.1 was in constant touch with the Applicant during the same time the deceased was allegedly eliminated. The material on record also prima facie proves the presence of the Applicant at the place of the incident during the relevant time. In my considered view these circumstances are prima facie sufficient to link the Applicant with the aforesaid crime.

12. In the present application the Applicant has tried to justify his presence at the place of the incident by stating that his uncle was a MLA and hence he was acquainted with several police officers including the accused No.1. He claims that on 11.4.2016 the accused No.1 had made several calls to him and called him near Mukund Plaza at Bhayander and later asked him to accompany him to a hotel for dinner. It may be mentioned that this is not a stage to consider the defence or to appreciate the material on record. Furthermore, whether the material on record is sufficient to hold the Applicant guilty on the

principles of vicarious liability, is a question which will have to be decided on merits and not at the stage of bail.

13. The material on record prima facie indicates that the Applicant is involved in commission of the crime. The offence is not only serious but is of heinous nature. In my considered view releasing the Applicant at this stage will hamper the trial. Considering the above facts and circumstances, this is not a fit case for grant of bail. Hence, the application is rejected. Considering the fact that the Applicant is in custody since 2017, trial is expedited. The learned Sessions Judge is directed to conclude the trial as expeditiously as possible and in any event within a period of one year from the date of receipt of copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)