

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

CRIMINAL BAIL APPLICATION NO. 1773 OF 2017

Mukund Janu Bhoir	... Applicant
Vs.	
State of Maharashtra	... Respondent

WITH

CRIMINAL APPLICATION NO. 511 OF 2018

IN

CRIMINAL BAIL APPLICATION NO. 1773 OF 2017

Ravindra Kundalik Bhoir	... Intervenor
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In the matter between

Mukund Janu Bhoir	... Applicant
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Vs.

State of Maharashtra	... Respondent
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Mr. Kabul Singh Labane for the applicant.

Ms. A.A. Takalkar, APP for the Respondent-State.

Mr. Nikhil P. Jadhav for the intervenor.

Mr. S.N. Chaudhari, PSI, Crime Branch, Thane is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th OCTOBER, 2018.

P.C.

1. The applicant is seeking bail in connection with C.R. No. I-289 of 2016 registered with Khadakpada Police Station for the offence punishable under Sections 302, 201, 364, 120B read with 34 of Indian Penal Code. The applicant was arrested on 9th September, 2016.

2. The prosecution case is that the complaint was lodged by Ravindra Kundalik Bhoir on 7th September 2016 with Khadakpada Police Station alleging that the brother of the complainant Vijay Kundalik Bhoir had left the house on 25th August, 2016 on his motor-cycle without informing anyone about where he is proceeding and he did not return home till late evening. When attempt was made to contact him on cellphone it was found that cell-phone was switch-off. Enquiries were made with the relatives, however his whereabouts could not be traced hence missing complaint was lodged on 26th August, 2016. Subsequently, it was learnt that Vijay had left with one Rafiq on his motor-cycle towards Titwala hence it was suspected that Rafiq had abducted Vijay for causing harm to his life. Thus, the complaint was registered for an offence under Section 364 of Indian Penal Code. Subsequently, supplementary statement of the complainant was recorded on 8th September, 2016.

3. It is the prosecution case that brother of the complainant was murdered by the accused and with a view to destroy the evidence the body of the deceased was buried. During the course of investigation, the accused were arrested. It is further alleged that there was a dispute between the applicant/accused and the

deceased Vijay Bhoir on account of alienated property. The deceased was the cousin of the applicant. Four to five months prior to the incident, there was a quarrel between the applicant and the deceased. With a view to liquidate deceased, the applicant had allegedly hatched conspiracy with other accused. Services of Rafiq were engaged to kill the deceased. Accused took the deceased to the place of incident. He was murdered by accused persons and the body was buried with a view to destroy the evidence.

4. Learned advocate for the applicant submitted that there is no evidence to connect the applicant with the crime. Merely on the ground of alleged enmity, no adverse inference can be drawn against the applicant. It is not the case of the prosecution that applicant was present at the scene of offence. There is no evidence that applicant has withdrawn the money or borrowed amount for the purpose of making payment to the assailants. The prosecution has relied upon the statement of the co-accused. The name of applicant/accused was disclosed by co-accused in the alleged crime. Merely on the basis of inference, the applicant cannot be subjected to prolonged custody. It is submitted that CDR record does not disclose about any conversation between the

assailants and the applicant before or after incident. It is further submitted that investigating machinery has recorded the statement of witness namely Prashant Shinde. He disclosed to police that somewhere on 10th August, 2016 the applicant had visited the hotel alongwith another person Ravindra Thakre and they were having some discussion. He was accompanied by two unknown persons whose name were disclosed by police as Akshay Bhoir and Rafiq Shaikh. It is submitted that there was no identification parade to show that two unknown persons allegedly accompanying the applicant were the same persons who had assaulted the deceased and the name of the said person is disclosed to the said witnesses by the police. It is further submitted that the said statement was recorded after the arrest of the applicant.

5. Learned APP submitted that there was enmity between the applicant and the deceased. There was dispute in relation to the property. Deceased was the cousin of the applicant. There was previous quarrel. With a view to liquidate the deceased the applicant had hatched conspiracy with the other accused and had given contract to the assailants to kill the deceased by making payment of Rs.5,00,000/-. It is further submitted that the

statement of Prashant Shinde refers to the presence of the applicant at hotel alongwith Ravindra Thakre and two unknown person and they were discussing some issue which shows that there was conspiracy between them to commit the present offence. It is further submitted that applicant had conveniently left the area on the date of incident to show that he was not involved in the crime however he was in touch with accused. CDR indicates that there were calls between the applicant and Ravindra Thakre. It is further submitted that five cases were registered against him and presently one case is pending registered with Mahatma Phule Police station vide CR No. 356 of 2016. In the other cases, the applicant is acquitted. It is further submitted that Ravindra Thakre was arrested on 7th September, 2016 and during the course of interrogation he disclose involvement of the present applicant in the crime and hence applicant was arrested on 9th September, 2016. Learned APP submits that accused took the deceased to the location of crime and he was assaulted by knife and hammer and after he was killed body of the deceased was buried on the outskirts.

6. Having gone through the papers, it can be seen that applicant was not present at the scene of offence. Prosecution case

proceeds on the basis that he had hatched conspiracy to liquidate the deceased. There is nothing to indicate that as to how part payment is made to the co-accused who had killed the deceased. It is also pertinent to note that statement of Shinde referred to herein above was recorded. He had stated that applicant and Ravindra Thakare and two unknown persons had visited the hotel and they were discussing something. Only on the basis of such statement inference cannot be drawn that the accused/applicant was involved in engineering conspiracy. The prosecution has not established the identity of two unknown person by any cogent evidence as the same persons who were assailants in the present crime. The witness has stated that the police had informed him that those two unknown person were Akshay Bhoir and Rafiq Shaikh. There was no test identification parade qua witness Prashant Shinde to establish that those unknown persons were assailants. CDR calls were allegedly made between the applicant and Ravindra Thakre. Those calls were purported made prior to the incident i.e 18th and 19th August, 2016. There is no evidence that the applicant had made any calls to the co-accused who were assailants. Apart from that only on the basis of call records, the applicant cannot be subjected to custody. Applicant is in custody

from 9th September, 2016 and hence last two years he is custody. According to the learned advocate for the applicant, there is no pending case against the applicant and all cases which were registered has resulted in acquittal. Learned APP has asserted that one case is pending against the applicant. The said case was registered in 2006 for an offence under Section 326 of Indian Penal Code. Taking into consideration the nature of the evidence against the applicant and aforesaid factual aspect, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R. No.I-289 of 2016 registered with Khadakpada Police Station which is subject matter in Session Case No. 379 of 2016 pending before the Sessions Court at Kalyan on furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of six weeks.
- iv. The applicant shall attend Khadakpada Police Station once in a month on first Saturday between 10 a.m. to 12 noon till further order;

- v. The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.
- vi. The applicant shall attend the trial Court on the date of hearing, unless exempted by the trial Court.
- vii. The Criminal Bail Application No. 1773 of 2017 alongwith Criminal Application No. 511 of 2018 stand disposed off.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.10.11
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(PRAKASH D. NAIK, J.)