

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

CRIMINAL BAIL APPLICATION NO. 2137 OF 2018

Raj Ganesh Jadhav

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Ashok P. Mundargi, Sr. Counsel a/w Mr. J.S. Bardeskar I/by
Mr. Abhishek Yende for the applicant.

Mrs. G.P. Mulekar, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 7th DECEMBER, 2018.

P.C.

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant was arrested on 14th March, 2018 in connection with C.R. No. 230 of 2018 registered with Tulj Police Station under Section 364, 365, 302, 201 read with 34 of Indian Penal Code.

2. The prosecution case is that the deceased was having business of ready made garments under the name and style of 'Hari Om Garments'. Accused No.1 is also having similar business at Mira Road. Accused No.1 Toyaz @ Rohit Rampyare Singh and other accused Pankaj Rampyare Singh have purchased ready made garments on credit of Rs.8 lakhs from the deceased in the year

2013 – 2014. The said accused did not pay the amount towards the said purchase. The deceased was insisting for return of amount. The accused had conspired with each other. They called the deceased at Dwarka Hotel on 14th March, 2018 at about 11 p.m. under the pretext of making payment. They abducted the deceased in Swift car bearing No. MH 84 AC 2573. Since the complainant's husband did not return home then she lodged the missing complaint. The police verified the CCTV footage at hotel Dwarka. The aforesaid accused were named in the First Information Report. Subsequently, the dead body was found in the vicinity of Mohandadu, Kuwadpada, Tal. Bhiwandi. The police reported the said incident as A.D.R No. 45 of 2018 was registered. The police conducted the spot inspection, inquest panchanama and the body was sent for postmortem. The deceased sustained several injuries on his person. The police showed photographs of the deceased. The complainant and her relative had identified the deceased. On the basis of photographs their statements were recorded. Second postmortem was conducted by prosecution. It is the case of the prosecution that accused had conspired with each other, abducted the deceased and then committed murder. On completing the investigation, chargesheet has been filed.

4. Learned counsel for the applicant submitted that there is no evidence to show the involvement of the applicant. Prosecution is relying on statement of Khageshwar Narbahadur Chetri recorded on 15th March, 2018 and Sudhiraj Shripanchu Chavan recorded on 21st March, 2018. Khageshwar Chetri has not referred the presence of the applicant alongwith co-accused and the deceased in the vehicle. It is further submitted that the statement of Sudhiraj Chavan cannot be accepted since there was no identification parade. Accused were purportedly shows to him by the police and he has been identified as a person who has visited the shop for consuming the soda on 4th March, 2018. It is further submitted that the other evidence relied upon by the prosecution is in the form of call data record (CDR) which indicate the tower location of the applicant was present in the Nalasopara assuming calls inter-say between the applicant and the other accused that would not be sufficient to show the involvement of the applicant in the absence of any other cogent evidence.

5. Learned APP submitted that the applicant has been identified by Sudhiraj Chavan which is apparent from the statement dated 21st March, 2018. He was amongst the other accused and the deceased were in the vehicle in which all of them proceeded and

consequently the deceased was murdered. CDR record indicate that there were calls between the applicant and the other accused. It is submitted that the reason for showing the presence of the applicant qua tower location because he has joined the other accused subsequently. It is also submitted that co-accused in the memorandum of statement stated sequence of events as to when the applicant had joined the other accused and subsequently the deceased was murdered.

6. Having heard both the sides. I have also perused the chargesheet. Except the statement of CDR as stated herein above, there is no corroborative evidence to show the involvement of the applicant, the statement of Sudhiraj Chavan was recorded on 21st March, 2018 who is shopkeeper and allegedly four persons had visited the shop for consuming soda in a vehicle he had purportedly the accused and the deceased. The accused were shown to the said witnesses by the police. It is not clear on what basis the accused were arrested and then shown to the said witness for the purpose of identification. There was no test identification parade. The other witnesses Khageshwar Chetri has referred the other person in the vehicle which is apparent from the statement dated 15th March, 2018 wherein there is no reference to

the presence of the applicant. Only on the basis of call data record with regards to calls made inter-say between the applicant and the other accused, applicant cannot be subjected to further custody. Learned APP submitted that the one case was registered against him under Section 376 of Indian Penal Code. However, learned counsel for the applicant submits that applicant has been acquitted in the said case. In view of the aforesaid circumstance, 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. 230 of 2018 registered with Tulinj Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. Applicant shall report to the Investigating Officer of the concerned police station on first Friday of every month between 10:00 a.m. to 12 noon till further order.
- iv. Applicant shall attend the trial Court on the date of hearing regularly, unless exempted by the Court;

- v. Applicant shall not tamper with the evidence.
- vi. Criminal Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)