

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2455 OF 2017

VINAYAK@VINAY PANDHARINATH DHORE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

CRIMINAL BAIL APPLICATION NO.2576 OF 2017

VIKAS @ GOGYA SURESH GAIKWAD)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

CRIMINAL BAIL APPLICATION NO.2579 OF 2017

YASMIN LATIF SAYYED)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Satyavrat Joshi, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 12th JANUARY 2018

P.C. :

1 Bail Application No.2455 of 2017 is filed by applicant/accused Vinayak @ Vinay Dhore. Bail Application No.2576 of 2017 is filed by applicant/accused Vikas @ Gogya Gaikwad whereas, Bail Application No.2579 of 2017 is filed by applicant/accused Yasmin Sayyed. They are accused in Crime No.130 of 2015 registered with Lonavala City Police Station for offences punishable under Sections 302, 364, 342, 201 and 120B of the Indian Penal Code with an accusation that in the night intervening 18th July 2015 and 19th July 2015, they had committed murder of Rajesh Pimpale and Akshay alias Sonya Shripal Gaikwad.

2 Heard the learned advocate appearing for applicants/accused at sufficient length of time. He drew my attention to statement of Deepak Reddy recorded on 29th October 2015 by the Investigator and argued that the Remand Application dated 26th

October 2015 points out that Deepak Reddy was arraigned as an accused. With this, the learned advocate argued that statement of Deepak Reddy recorded on 29th October 2015 by the Investigator is hit by the provisions of Section 162 of the Code of Criminal Procedure and the court cannot look at this statement. It is, further argued in the alternative that, this at the most can be said to be the statement of the accomplice, and as such, no reliance can be placed on it. The learned advocate further argued that statement of Deepak Reddy is falsified by remand report submitted by the Investigator to the learned Magistrate on 8th August 2015 which reflects version of Dr.Vikesh Mutha. It is seen that Dr.Vikesh Mutha has reported to the Investigator that at the instance of main accused Kisan Pardesi, at about 6.00 a.m. of 19th July 2015, two injured boys were brought to his hospital. This, according to the learned advocate for the applicant/accused, implies that at about 6.00 a.m. of 19th Jul7 2015, both boys were alive, and therefore, version of Deepak Reddy that in the night intervening 18th July 2015 and 19th July 2015 Rajesh Pimpale and Akshay Gaikwad are done to death is *per se* false.

3 The learned advocate for applicants/accused further argued that statement of Milind Mohite nowhere points out complicity of any of the applicants/accused in the crime in question and the said statement is pointing out Kisan Pardesi and Sharda Pardesi, out of which Sharda Pardesi is already released on bail. The learned advocate further pointed out that witness Mohan Muttu pointed out to the Investigator that in the afternoon of 19th July 2015 itself, he had advised mother and elder brother of Rajesh Pimpale to lodge the First Information Report (FIR) about abduction of both victims.

4 The learned advocate for applicants further argued that even if statement of Deepak Reddy is accepted, then also it fails to make out the offence punishable under Section 302 of the Indian Penal Code. It is further argued that on the basis of alleged disclosure statement of main accused Kisan Pardesi, bones were recovered by police and those were subjected to DNA Test with samples of DNA of mothers of Rajesh Pimpale and Akshay Gaikwad. The DNA Report collected by the Investigator is

negative, implying that bones recovered were not those of Rajesh Pimpale and Akshay Gaikwad. Dead bodies of both these persons are not yet found, and therefore, it cannot be said that they are murdered.

5 Lastly, it is argued that the report lodged on 20th July 2015 by Shripad Gaikwad is, infact, a report disclosing commission of cognizable offence, and as such, it ought to have been treated as FIR and not as missing report. Finally, it is argued that applicant/accused Yasmin, being a lady, needs to be granted bail considering the fact that she is behind bars right from 17th October 2015. Other applicants are also behind bars from either September 2015 or October 2015. The Charge is not yet framed and trial will take its own course.

6 The learned APP opposed the application by contending that the case in hand is that of a double murder and the material collected by the Investigator during the course of investigation strongly points out complicity of all the three

applicants/accused in the crime in question. The learned APP relied on statement of Deepak Reddy and also pointed out statement of Vivek Kadam, Yuvraj Chavan and Balkrishna Jangle to demonstrate that applicant/accused Vinayak Dhore was involved in the instant crime right from abduction of Rajesh Pimpale and Akshay Gaikwad, till their killing and disposal of their dead bodies. Other applicants/accused have actively participated in commission of murder of Rajesh Pimpale and Akshay Gaikwad. The learned APP further argued that applicant/accused Yasmin had aided the main accused Kisan Pardesi in purchasing a carbine by transferring the funds.

7 I have carefully considered the rival submissions and also perused the charge-sheet. On 20th July 2015, Shripad Gaikwad – father of Akshay Gaikwad, lodged a report to the effect that his son Akshay Gaikwad and Rajesh Pimpale are abducted by Kisan Pardesi and associates of Kisan Pardesi. Though this report dated 20th July 2015 was disclosing commission of cognizable offence, unfortunately, Lonavala City Police Station treated it as a

report of missing persons. Then on 4th August 2015, Shripad Gaikwad again lodged second report on the basis of which, Crime No.130 of 2015 for the offence punishable under Section 363 of the Indian Penal Code came to be registered.

8 It is case of the prosecution that because of quarrel, to show supremacy, and as Rajesh Pimpale and Akshay Gaikwad challenged supremacy of Kisan Pardesi, he along with his associates abducted them from the premises of Lonavala Railway Station, took them to his *math* at Kamshet, committed their murder by assaulting them brutally in the night intervening 18th July 2015 and 19th July 2015, and ultimately disposed of both bodies at Tamhani Ghat.

9 Undisputedly, bones recovered at the instance of main accused Kisan Pardesi were subjected to DNA Test and the same test is negative.

10 It is well settled that for making out the offence punishable under Section 302 of the Indian Penal Code, finding

out dead bodies is not a *sine-qua-non*. The offence punishable under Section 302 of the Indian Penal Code can be made out without finding dead body. It needs to be noted here that right from 18th July 2015 till date, Rajesh Pimpale and Akshay Gaikwad are not seen by anybody.

11 During the course of investigation, statement of Deepak Reddy was recorded by the Investigator. In remand report dated 26th October 2015, he was shown as accused no.15. However, that was on the basis of suspicion and ultimately, he came to be cited as witness and on 29th October 2015, his statement came to be recorded. Before advertng to his statement, statements of Yuvraj Chavan and Vivek Kadam are relevant. Both these witnesses have stated that at about 9.00 p.m. of 18th July 2015, main accused Kisan Pardesi, applicant/accused Vinayak Dhore and the co-accused were assaulting Rajesh Pimpale and Akshay Gaikwad. Then, they were abducted by forcibly making them to sit in a car, during which co-accused Sunil Patekar had assisted other accused persons.

12 Deepak Reddy has stated that when he was in the *math* at Kamshet, owned by accused Kisan Pardesi, at about 10.30 p.m. of 18th July 2015, main accused Kisan Pardesi along with co-accused and applicant/accused Vinayak Dhore brought Rajesh Pimpale and Akshay Gaikwad in the *math*. While bringing them, they were being assaulted by Kisan Pardesi, Vinayak Dhore and others. Deepak Reddy has further reported that, then, Rajesh Pimpale and Akshay Gaikwad were denuded and they were assaulted by all applicants/accused as well as co-accused. Role of assaulting by a bamboo is attributed to applicant/accused Vinayak Dhore whereas, assault by fists and kick blows to both Rajesh Pimpale and Akshay Gaikwad is attributed to applicant/accused Yasmin Sayyed and applicant/accused Vikas Gaikwad. Statement of Deepak Reddy shows that assault on both these victims continued from 10.30 p.m. of 18th July 2015 to 1.30 a.m. of 19th July 2015. Result of this assault on the victims is reflected in the statement of Deepak Reddy. Both the victims seem to be brutally assaulted. Akshay Gaikwad was found to be bleeding from his anus and there was severe injury to the private part of Rajesh

Pimpale. Deepak Reddy has stated that because of the brutal assault, Rajesh Pimpale and Akshay Gaikwad died and then applicant/accused Vikas Gaikwad, in the morning hours of 19th July 2015, was entrusted with the task of ascertaining as to whether outsiders were present near the car of main accused Kisan Pardesi. On getting green signal from him, all applicants/accused took dead bodies, as stated by Deepak Reddy, to the car of accused Kisan Pardesi. Accompanied by applicant/accused Vinayak Dhore as well as co-accused, main accused Kisan Pardesi then took dead bodies in that car for disposing them.

13 No doubt, the remand report dated 8th August 2015 shows that two injured persons were brought to the hospital of Dr.Vikesh Mutha in the morning hours of 19th July 2015, the effect thereof will have to be ascertained at the stage of trial by cross-examining the witnesses. Similarly, suppression, if any, of the statement of Dr.Vikesh Mutha, and the effect thereof will have to be considered at the time of the trial.

14 Statement of Milind Mohite shows that in the morning hours of 19th July 2015, he saw main accused Kisan Pardesi, his wife Sharda Pardesi, one lady wearing chudidar and five to six boys carrying two bodies by lifting them by limbs and placing them in the car.

15 Statement of Balkrishna Jangle shows that two bodies were disposed of by main accused Kisan Pardesi accompanied by applicant/accused Vinayak Dhore on 19th July 2015.

16 It is well settled that if culpable homicide is done with the intention of causing such bodily injuries, which the offender knows is likely to cause death of the person to whom hurt is caused, offence of murder is made out. In the case in hand, assault was by means of wooden bamboos, fists and kick blows by several accused persons on two victims, who were denuded, and the assault continued for hours together. This implies that offenders were certainly knowing the result of their acts. Hence, at this stage, it is difficult to conclude that no offence punishable under Section 302 of the Indian Penal Code can be made out.

17 Considering the nature of crime, the circumstances in which it was committed and the manner in which the same took place, I see no reason to grant bail to all applicants/accused, though one of them is a lady.

18 The application is, therefore, rejected.

19 It is seen that accused persons involved in this case are behind bars from the year 2015. Therefore, the Sessions Judge, seized with the sessions case, is directed to take up the trial of the case expeditiously and finish it off within a period of one year from the date of starting the recording of prosecution evidence.

(A. M. BADAR, J.)