

Sarnobat

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

BAIL APPLICATION NO.2565 OF 2017

Kiran Balu Nimase ..Applicant
Vs.
The State of Maharashtra ..Respondent.

**ALONGWITH
BAIL APPLICATION NO.2566 OF 2017**

Milind B. Bansode ..Applicant
Vs.
The State of Maharashtra ..Respondent.

Mr.P.G. Sarda i/by Mr.Sachin T. Zalte for the applicants.
Mr.S.H. Yadav, APP for the State.
Mr.R.P. Kshirsagar, PSI, Warje Malwadi Police Station, Pune city.

CORAM : P. N. DESHMUKH, J.

DATE : 24rd APRIL, 2018.

P. C. :

1. Both these applications are arising out of crime No. 246/2016 registered with Warje-Malwadi Police Station Pune and as such for the purpose of convenience are heard and decided together by this common order.

2. Heard learned counsel for applicant, Addl. P.P. for respondent. It is the case of applicant that there is no evidence against the applicants establishing their involvement in causing death of

deceased Sachin, son of complainant Jamuna and by referring to her statement had contended that involvement of applicants in her statement would only established presence of both the applicants along with co-accused Nana Londhe and his men when on 23rd May, 2016 in the evening co-accused Nana Londhe along with his men are alleges to have kidnapped the deceased. It is submitted that alleged incident is said to have occurred in the marriage ceremony which was celebrated at Mahalaxmi Lawns, Karve Nagar, Pune.

3. By referring to the contents of report it is further submitted that, no names of applicants are mentioned in the complaint and only maiden name of applicant Kiran Nimase is stated who is referred as "Kiran son of Babu". Learned counsel for applicants further referring to the statement of Ruhul Tupere, brother of deceased submitted that said statement is also on the earlier incident of kidnapping of deceased by Nana Londhe and his men which statement even otherwise is stated to be recorded three months after the incident. By referring to this evidence which is only evidence available against the applicants, it is submitted that it is not sufficient to establish involvement of applicants to be instrumental in any manner in commission of murder of deceased Sachin, who as per report lodged by police Havildar Ramdas Laxman Jadhav, Buckle No. 1164 was found lying dead in Ghat region of mountains near Kalubai temple, on 24th May, 2016. It is thus,

contended that applications be allowed as investigation is complete.

4. Learned APP opposed the applications and had referred to statement of Rashtrapal Bansode and has contended that applicant Milind Bansode had visited his house when Rashtrapal Bansode found clothes of applicant Milind having blood stains and has therefore, submitted that his statement directly implicate applicant. Learned APP however on instructions makes a statement that clothes of Milind are not seized in the course of investigation. In view of statement made as aforesaid, nothing can said to be established from the statement of Rashtrapal Bansode.

5. Prosecution has also referred to statement of Ajit Tupere, brother of deceased which also refers to earlier incident of kidnapping and had submitted that from this statement as well from complaint, deceased is lastly found in the company of applicants who had kidnapped him a day prior to his death and thus submitted that, applications be rejected on this count.

6. In the background of facts and submissions advanced as aforesaid, case of prosecution is admittedly found based on circumstantial evidence and that too on the theory of "last seen" as according to complainant Jamuna and other eye witnesses, co-accused Nana Londhe and his men kidnapped deceased from the marriage function on 23rd May, 2016 at 6.00 pm. Complainant was

informed by one Rahul Tupere about such incident and therefore, she visited the spot which was situated outside the marriage lawn and found co-accused Nana Londhe along with few unknown persons forcefully taking away deceased on his two wheeler. She also claims that on her attempt to intervene, Nana Londhe assaulted her by kick blow in her abdomen and also snatched her gold chain. On the basis of report lodged by Jamuna as aforesaid, initially crime is registered for the offence punishable under section 365, 323, 504 r.w. 34 of Indian Penal Code.

7. Statements of Rahul Kamble and Rahul Tupere, Akshay Khodshe are admitted to be on the same lines on the point of co-accused Nana Londhe kidnapping deceased. Complainant in her report has not named either of the applicants in the incident of kidnapping as according to her Nana Londhe and his friends kidnapped Sachin. However, named applicant Kiran in the fag end of report without referring his full name, as “Kiran son of Babu”. No name of applicant Milind is referred in the report. Though has stated full names of Nana Londhe and other co-accused to have kidnapped Sachin along with others. It is only on the basis of said evidence, applicants are arrested.

8. Statement of Rashtrapal Bansode relied by prosecution recorded after seven days from the date of incident would reveal that applicant Milind Bansode is his cousin who along with five friends who

are of unknown to him visited his house when he noted blood stains on clothes of Milind Bansode and his friends. His statement though further reveals that applicant Milind and his friends thereafter, purchased new clothes and changed the clothes which were on their person, admittedly their clothes are not seized. In view of statement made by learned APP as aforesaid, statement of Rashtrapal Bansode would be of no significance.

9. Similarly statement of Ruhul Tupere, Rahul Kamble, Ajit Tupere borther of the deceased, established involvement of applicants only on the count of kidnapping and nothing more. In fact statement of Raul Tupere is recorded after three months of the incident. In view of statement relied by prosecution as aforesaid, even there is no satisfactory evidence on the theory of last seen together as from the statement of witnesses referred above it can only be said that deceased was lastly seen in the company of applicant Kiran who is named only by his maiden name by the complainant and no name of applicant Milind in any manner is stated in the complaint, which is lodged immediately after the incident of kidnapping.

10. By now, law insofar as theory of 'last seen together' is well established. It is settled principle of law that the Court has to apply the theory of 'last seen together' cautiously and unless there is corroborating and circumstantial evidence that does not by itself

necessarily lead to the inference that it was the accused who committed the crime. In the present case though, the applicant was lastly seen together with the deceased, there is no corroborating and circumstantial evidence leading to the conclusion that the applicant has committed the murder of deceased.

11. In the background of above facts, statement of Police Havildar Ramdas Jadhav, Buckle No. 1165 establish that while he was on duty at Velha Police Station, District Pune on 24th May, 2016 received telephonic information from B.T. Vaikar, API that as per information received from Pandurang Renuse Police Patil one body of male was lying in the Ghat region near the temple of Kalubai. Accordingly Police Patil with Polices visited the spot and recovered the dead body which was found having crush injuries on face and head which is identified by his father to be that of his son. According to P.M. notes there were as many as 20 injuries on the person of deceased with ligature mark over his neck. Most of the injuries are in the nature of chop injuries and incise wounds, along with fracture of scull. The cause of death is certified as ligature strangulation with chop injuries to head.

12. Though death of deceased Sachin thus appears to be unnatural, there is no prima facie evidence to connect the applicants in the present crime. Applications are therefore, liable to be allowed.

Hence, the following order ;

ORDER

- (i) Applicant Kiran Balu Nimase in Bail Application No. 2565/2017 and applicant Milind Balasaheb Bansode in Bail Application No. 2566/2017 shall be released on bail in crime No. 246/2016 registered with Warje-Malwadi Police Station, District Pune on their executing P.R. bond in the sum of Rs.50,000/- each with one surety each in the like amount.
- (ii) While on bail applicants shall mark their presence with Warje-Malwadi Police Station, District Pune on the first day of each month, pending trial between 7.00 am to 10.00 am and shall attend the Trial Court without fail.
- (iii) Applicants shall not tamper with the evidence in any manner.
- (iv) Learned Trial Court shall not get influenced by any of the observations made herein above and shall independently evaluate evidence at the time of trial.
- (iv) Applications are disposed of accordingly.

[P. N. DESHMUKH , J.]

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