

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

BAIL APPLICATION NO.2602 OF 2017

Satish Khanderao Gurgude Applicant

Vs.

The State of Maharashtra Respondent

Ms. Kirti Hansraj Ahuja for the Applicant.

Mr. S.H. Yadav, APP for the State.

Mr. K.S. Meher, PSI, Trimbakeshwar police station, present

Coram : Smt. Sadhana S. Jadhav, J.

Date : 13th February, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 27th June 2017 in Crime No.63 of 2017, registered at Trimbakeshwar Police Station, District Nashik, for the offences punishable under Sections 302, 201, 363, 120(B) of Indian Penal Code. The investigation is completed and the charge-sheet is filed on 22nd September 2017.

3 It is the case of the prosecution that on 9th June, 2017, Namdeo Murlidhar Sathe lodged a report at the police station

alleging therein that on 9th June, 2017 at about 12.30 noon, Shravan Yedu Wanjole (Deputy Serpanch) had informed that Ramdas Wagh has met with an accident at Torangan Ghat and that he is expired. The information was given to the police station. The dead-body was sent for autopsy. The complainant suspected that Ramdas Wagh had met with homicidal death and the cause of death in all probabilities would be strangulation.

4 On the basis of the said report, Crime No. 63 of 2017 was registered against the unknown person. The supplementary statement of the complainant was recorded on 23rd August 2017, wherein he had disclosed that it had transpired in the course of investigation that the dead-body, which was found on 9th June, 2017 was not of nephew Ramdas Wagh, but Ramdas had manipulated that it was his death only to take benefit from the insurance policy. It is further disclosed that they had taken Mubaraq, waiter who was working in the hotel, which was situated next to the hotel Shravan Wanjole and Sagar Wanjole. The face and head of the dead-body was smashed only to cause dis-appearance of evidence. On the basis of the said report, the accused were arrested.

5 It is the case of prosecution that the present applicant had helped the original accused nos. 1, 3 and 4 to eliminate Mubaraq and caused dis-appearance of evidence. It is alleged that the original

accused no.1 had hatched conspiracy with accused nos. 2, 3 and 4. The present applicant happens to be original accused no.2. It is the case of the prosecution that the investigating agency had recovered a bag containing insurance policies from one Dhondiram Pawar with whom the applicant herein had kept bag. The memorandum of the present applicant was recorded on 29th June 2017 wherein it is shown that the applicant had disclosed to the police that he has kept the bag containing insurance policies with Dhondiram Pawar. The bag was recovered from the house of Dhondiram Pawar vide panchanama dated 6th July, 2017. It is pertinent to note that the statement of Dhondiram Pawar was recorded under Section 164 of Cr.P.C., wherein he has voluntarily disclosed to the learned Magistrate that he was acquainted with the present applicant. One day in the evening, the applicant had entrusted black colour bag with him and requested him to keep it at his house. That after 2 days, the applicant had been to his house and taken away bag. Thereafter the police had taken the present applicant to the house of Dhondiram Pawar alongwith bag and Dhondiram had identified the same to be the same, which was kept with him and taken away by the present applicant. Dhondiram Pawar has specifically stated that since he is an illiterate person, he had no knowledge in respect of the contents of files which were in the said bag.

6 Learned counsel for the applicant therefore rightly submits that the Memorandum under Section 27 of the Indian

Evidence Act is foisted upon the present applicant. The papers of investigation would show that the investigating agency has recorded statement of one Manisha Anil Deore, who happens to be the mother-in-law of Jayshree, who is daughter of accused no.3. She has specifically stated that on 6th June, 2017, Sagar Wanjole had been to the house of Manisha Deore in Alto Car. He was accompanied by unknown person, who was wearing red colour T-Shirt and grey colour pant. That Sagar Wanjole had taken him to the barber and got his hair cut. They had disclosed that the said person is working in the hotel of Shravan Wanjole and that he has been brought to village as he was involved in prohibition case and to attend the Court. On 8th June, 2017, Ramdas had been to the house of Manisha and had taken away the person who was left in their house by Sagar. She has identified the said person on the basis of photograph shown to her. She was then informed that it was Mubaraq who has died in the accident. In fact, she has also stated that his clothes were left in the shed of her house, which she has destroyed. She had been to Baswant Pimpalgaon to meet Shravan i.e. original accused no.3 and at that time she had seen injuries on his head, hand and leg.

7 Learned APP submits that the material against the applicant is in the form of bag, which was recovered from the house of Dhondiram Pawar, that he had hatched conspiracy alongwith Ramdas and create the scene that Ramdas has died in the accident.

The said recovery is falsified by the statement of Dhondiram Pawar under Section 164 Cr.P.C. It cannot be said that there is sufficient material against the applicant in hatching the conspiracy. There is cogent material against the original accused nos. 1, 3 and 4. Taking into consideration the material collected in the course of the investigation and the submissions advanced across the bar, this Court is of the opinion that the applicant deserves to be enlarged on bail. Applicant nos. 1, 3 and 4 shall not claim parity with the present applicant.

8 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

1 The application is allowed.

2 The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.

3 The applicant shall not reside in Taluka Chandwad, District Nashik till conclusion of the trial.

(*Smt. Sadhana S. Jadhav, J*)