

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1008 OF 2018**

Anil Sainath Choudhari ...Applicant

Vs.

State of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 907 OF 2019**

Deepak Kundalik Choudhary ...Applicant

Vs.

State of Maharashtra ...Respondent

- Mr. Aniket Nikam I/b Mr. Aashish Satpute, Advocate for the Applicant in ABA 1008/18.
- Mr. Sanjiv P. Kadam with Mr. P. P. Raut I/b Mr. Hulyatkar, Advocate for the Applicant in ABA 907/19.
- Ms.S.S. Kaushik, APP for the State.
- Mr. P. M. Choudhari, API with Mr. Sachin Pawar, PN-2059, Lonikalbhor Police Station, Pune Rural.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th SEPTEMBER, 2019

P.C. :

1. Both these applications are decided together, because they arise out of the same offence, is based on the same investigation and there is a common evidence in the form of chargesheet against these applicants. For the sake of convenience, both these applicants, in these applications, are referred to hereinafter by their names.

2. The applicants are seeking their release on bail in connection with CR No. 148/17 registered at Loni Kalbhor Police Station, Pune for offences under Sections 302, 120-B, 201 read with Section 34 of the IPC.

3. The FIR is lodged on 8th March 2017 by one Dayanand Limkar. He has stated in his FIR that on 8th March 2017, at about 1.10 a.m., around midnight, he was going towards Peth Naigaon on his motorcycle. When he had reached J. B. Chaudhary Developers, he saw that, a Hero Splendor motorcycle was lying on the road. He got an impression that there was some accident. Therefore, he went near the motorcycle. He noted the number of the motorcycle as MH-41-W-3946. He also saw a white Innova car bearing No. MH-14-BA-979 parked inside the J. B. Chaudhary Developers gate. He could see in the light of the head light that a person was lying on the ground. He had suffered injuries on his head. Three persons were standing near him. He had seen blood stains on the shirt of one of the persons. He was having an iron rod in his hand. The person carrying iron rod came running towards the informant. Therefore, the informant got scared and he went

away from the spot. On the next day morning, when the informant was travelling on the same road, he saw that crowd had gathered near the spot, where the person was assaulted in the night. He saw a dead body lying there. Therefore, the informant immediately told the police, who were present there, about the incident which he had seen in the night. Based on this information, FIR was lodged.

4. The investigation was carried out and the chargesheet was filed. The applicants were arrested on 8th March 2017 itself.

5. The case of the investigating agency in the charge-sheet is that the applicant Deepak was in heavy financial debt. He had planned to get out of his financial difficulties by faking his death. He had planned to obtain money under insurance policy in his name. He conspired with the applicant Anil and another co-accused Pradeep Choudhari. They brought the deceased from a labourer camp. He was made to drink liquor. Applicant Deepak made him wear his own clothes i.e. Deepak's clothes. He was kept in the Innova car bearing above number. Inside the car, he was assaulted and then he was pulled outside the car. He was assaulted

with iron road and ultimately they crushed his face by a big stone, so that his identity could not be established. The applicant Deepak's identity card, wallet, mobile phone, etc were kept with the deceased and the dead body was put on the side of the road going from Pune to Solapur. The investigation papers show that the name of the deceased was Babu Nepali. According to the investigating agency, the deceased was taken by the accused to various places. There are statements of witnesses like Amita Kale, Shakila Kalwat, Sheetal Kale, Nanda Andhare and Kajal Shaikh. These statements show that on 6th March 2017, deceased was taken by all the accused to their entertainment center. There is a statement of one Popat Chaudhary, who was the manager of a permit room. His statement shows that the accused and one unknown person had come to his permit room on 7th March 2017. According to the investigating agency's case, that unknown person was the deceased himself. He had referred to the CCTV footage of that permit room.

6. There is a statement of one Sachin Hake, who was a friend of applicant Deepak. He has stated in his statement that about six

months prior to the incident he had an occasion to see the accused Deepak and Anil in a liquor bar. Both these applicants were discussing the financial difficulties faced by the applicant Deepak. Deepak had suggested that applicant Anil should bring a person of similar appearance as that of Deepak and that they would commit his murder. Deepak had suggested that he would keep his documents with such person as he wanted to fake his own death. Deepak had planned to obtain money under insurance policy.

7. Apart from this evidence, there is a panchanama dated 8th March 2017. The Innova car bearing number MH-14-BA-979 was recovered at the instance of the applicant Anil. The car shows presence of blood stains inside and outside the car. There is one more panchanama under which the applicant Anil's blood stained clothes and shoes were recovered at the time of his arrest.

8. Apart from this, the investigating agency has belatedly recorded statement of one Pravin Gaikwad on 9th February 2019, wherein he had stated that the said Innova car was given to the applicant Anil in July 2012 and since then the applicant Anil was using that car. This in short the evidence against the applicant

Anil.

9. So far as the applicant Deepak is concerned, apart from aforementioned circumstances, there are statements of his wife Jyoti and other witnesses showing that Deepak was under great financial stress. There are statements of the owner of motorcycle, Sachin Shirsath and his uncle Shankar Jadhav, which show that on 7th March 2017 applicant Deepak was given this motorcycle in the morning by Shankar Jadhav. The owner of the motorcycle was Sachin Shirsath. The same motorcycle was seen by the first informant at the spot. Deepak's documents and the shoes were found on the dead body. There is a statement of one Kiran Choudhari to that effect. The panchanama of the spot as well as of the dead body show the presence of all the documents and the clothes on the dead body. This in short is the evidence against both these applicants.

10. Heard, Mr. Aniket Nikam, learned counsel for the applicant Anil Choudhari in ABA 1008/18 as well as Mr. Sanjiv Kadam, learned counsel for the applicant Deepak Choudhari in ABA 907/19 and Ms. Kaushik, learned APP for the State.

11. Mr. Nikam submitted that it is a case of circumstantial evidence and the circumstances are not strong enough. The motive is not attributed against the applicant Anil. Even the motive attributed against the applicant Deepak was very vague. The first informant was made to identify the suspects in the test identification parade, but he failed to identify either of the accused. The other eye witnesses were not asked to identify the suspects at all. He submitted that the face of the dead body was completely crushed. Therefore, identification of the dead body was not possible. There was no connection between the person accompanying the accused and the dead body. He submitted that the recovery of the blood stained articles inside the car is against the prosecution case. According to the prosecution case, assault had taken place outside the car and there was no reason that the blood would appear inside the car. He submitted that the only circumstance mentioned against the applicant Anil is recovery of that particular car at his instance. However, that circumstance itself cannot form basis of his conviction. In support of this submissions, he relied on the judgment of Hon'ble Supreme Court

in the case of **Narsinbhai Prajapati Etc Vs. Chhatrasinh Kanji and others, reported in 1977 AIR SC 1753.**

12. He submitted that there is no CA report showing that the blood on the clothes of applicant Anil was that of the deceased. He particularly attacked the approach of the investigating agency in recording the statements in February 2019, during pendency of this application to connect the Innova car with the applicant Anil. He submitted that delay in recording such statement after the applicant had argued this case for bail, shows malafide intention on the part of investigating agency. He relied on the judgment of Hon'ble Supreme Court in the case of **Harbeer Singh Vs. Sheeshpal and others reported in (2016) 16 SCC 418**, wherein it is observed in paragraph 17 as thus:-

“17. However, Ganesh Bhavan Patel V. State of Maharashtra, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under Section 161 of the Cr. P. C, although those witnesses were or could be available for examination when the investigating officer visited the

scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. (See also Balakrushna Swain Vs. State of Orrissa, Maruti Rama Naik Vs. State of Maharashtra and Jagjit Singh Vs. State of Punjab). Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case”

He, therefore, submitted that considering all these, applicants deserves to be released on bail.

13. Mr. Kadam, appearing for the applicant Deepak, on the other hand, submitted that the first informant had failed to identify the applicant Deepak in the test identification parade and the other eye witnesses were not made to identify him at all. He stressed on the fact that the identity of the dead body was not established. He further submitted that the motorcycle in question was not involved in the crime and it could be a case of accident and the applicant is unnecessarily involved in this case.

14. All these submissions are opposed by the learned APP. She submitted that the circumstances against both the applicants are

strong enough and therefore, bail should not be granted. She relied on each of the circumstances mentioned herein above to contend that these circumstances by themselves or taken together complete the chain showing complicity of the applicants.

15. I have considered all these submissions. As far as applicant Deepak is concerned, there is a strong motive attributed to him by the prosecuting agency. The material shows that he was in great financial difficulties and he wanted to come out of it. He had planned this conspiracy. There is a witness as mentioned above who had heard both these applicants discussing a similar plan through which they wanted to show that the applicant Deepak himself had died. The most important circumstance against him is of finding of all the important documents showing his identity on the dead body. An important witness has identified the clothes on the dead body as well as shoes on the dead body as those of the applicant Deepak. This shows that the investigating agency's case is corroborated by this witness. Another important circumstance against him is finding of the motorcycle near the spot, where the deceased was assaulted further. The number of the motorcycle was

immediately informed to the police by the first informant. There is no scope to fabricate this number. There are statements of witnesses who stated that the motorcycle was taken by the applicant Deepak in that morning itself. The finding of that motorcycle near the dead body which carried his documents is a very strong circumstance against the applicant Deepak.

16. As far as applicant Anil is concerned, the most important circumstance against him is the recovery of Innova car at his instance. The number of the innova car was mentioned in the FIR itself. Therefore, there was no scope to fabricate such evidence. As mentioned earlier, there is a witness who had heard and seen this applicant Anil discussing and listening to the plan as hatched by the main accused Deepak. Evidentiary value of the evidence of this witness will have to be determined during trial. The submission that the blood stains could not be found inside the car has no substance because the informant and the eye witnesses had seen only some part of the incident, where the accused were assaulting or were trying to crush the face of the deceased. However, that itself does not mean that no assault had taken place inside the car.

There are statements of witnesses showing that the car was in possession of this applicant Anil. The arguments regarding belated recording of statement of witness who was always available to the prosecuting agency; are not acceptable. However delay in recording the statement at this belated stage would be a matter to be considered by the trial court when the entire evidence led before it. Therefore, the observations of the Hon'ble Supreme court will have to be taken into consideration by the trial court. The judgments relied on by Mr. Nikam pertain to the cases wherein the prosecution had led its entire evidence. Today at the stage of consideration of bail application, there is sufficient material against both these applicants and therefore, no case for bail is made out. Both these applications are rejected.

17. In view of the order passed in these applications, other application in this matter is disposed of accordingly.

(SARANG V. KOTWAL, J.)