

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 588 OF 2019
IN
CRIMINAL APPEAL NO. 734 OF 2013

Dharmendra Paras Chauhan ... Applicant

Versus

State of Maharashtra ... Respondent

Mr.Kuldeep Patil i/by Prashant S. Hagare for the applicant.

Mr. Arfan Sait, APP for the State.

CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.
DATE : JULY 11, 2019

P.C.:

Accused no. 1 seeks bail mainly on parity. Submission is accused nos. 2 to 4 have been given bail on 27/7/2017 and 09/07/2018. Learned counsel states that the evidence of eye witnesses PW 5 Kishore has not been accepted because his statement has been recorded after about a month. Learned counsel states that though the prosecution claims that wire allegedly used for strangulation and knife with which accused no. 3 slit a throat of the deceased was recovered under section 27 of the Evidence Act at the instance of this accused, scooter used for commission of offence and the ornaments

stolen/removed from the deceased were recovered under section 27 at the instance of the accused no. 2 and 4.

2. Learned APP submits that accused no. 4 has been given bail on 09/07/2018 because of previous order dated 27/7/2017 enlarging accused no. 2 on bail obtained on Criminal Application No. 850 of 2017 without inviting attention of the court to the fact that earlier bail application moved by accused no. 2 was withdrawn. He contends that therefore, this order cannot be used for the purpose of parity and the later order which drew support from the order dated 27/7/2017 therefore, be discarded.

3. He invites attention to the role of accused no. 1. He submits that the accused no.1 was sitting on the chest of the deceased and therefore, has actively assisted in killing. He contends that in this situation, the argument of parity is erroneous.

4. The contention that earlier bail application moved by accused no. 2 was not pointed out to this court on 27/7/2017 is seriously disputed by the learned counsel for the applicant. He points out that earlier application was withdrawn and the withdrawal was very much reflected in the pleadings in Criminal Application No. 850 of 2017.

5. We need not dilate more on this aspect. The fact that accused no. 2 has been enlarged on bail is not in dispute.

Similarly the enlargement of accused no. 4 is also not in dispute. Both these accused persons are claimed to be holding hands of the deceased. Thus by holding his hands, they neutralized him and facilitated the alleged killing. Same effect may flow from the alleged act of sitting on the chest of the deceased.

6. The vehicle (scooter) used for the offence has been recovered under section 27 of the Evidence Act at the instance of accused no. 2. The ornaments removed from the deceased were allegedly taken to UP, melted and then were in the shape of golden ingots. These golden ingots have also been recovered under section 27 of the Evidence Act. This recovery by itself again cannot distinguish the case of the present applicant/accused no. 1 as the prosecution story claims that throat was slit by accused no. 3.

7. In this situation, on the ground of parity, we release the present applicant on bail on the following terms and conditions :

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount.

(b) He shall give address at which he shall always be available

during the pendency of this appeal along with his contact numbers.

(c) Similar details in relation to his sureties shall also be furnished.

(d) He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter.

(e) He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing.

(f) He shall report to the Superintendent/Registrar of Sessions Court, Vasai on first working Monday in every two months as a condition of his release.

(g) His failure to observe any of the terms and conditions shall entitle the respondent State to take him in custody forthwith.

(h) Application is accordingly allowed and disposed of.

(MRS.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)