

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1781 OF 2019**

1. Mahesh Pandurang Nimse	
2. Sunil Vitthal Gaikar	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. Raju Digamber Suryawanshi for the Applicants

Ms. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 18th SEPTEMBER 2019

P.C. :

1 At the outset, learned counsel for the applicants seeks leave to amend. Leave granted. Amendment to be carried out forthwith.

2 Heard learned counsel for the applicants and the learned A.P.P.

3 By this application, the applicants seek their enlargement on bail in connection with C.R. No. I-34 of 2016 registered with the Kasara Police Station, Thane, for the alleged offence punishable under Sections 302, 201, 364, 365, 120B, 506 r/w 34 of the Indian Penal Code ('IPC').

4 Learned counsel for the applicants submits that there is no material to connect the applicants with the alleged offence. Learned counsel relied on the statements of two witnesses i.e. Kadam Malu Ughade and Dundaram Soma Shinge, in support of his submission. He submits that neither of the said two witnesses have disclosed the names of the present applicants. He submits that neither has any identification parade been held to show that the other 4 to 5 acquaintances present with co-accused Babu Bhagat, were the applicants. He further submits that the statement of Jafar Shah shows that he heard co-accused-Babu Bhagat telling 4 to 5 boys that they have to kill somebody. He submits that no identification parade was held and what was shown to him, were only photographs of the accused in the police station and as such, the said identification cannot be said to be proper identification.

5 Learned A.P.P opposed the application. She, however, does not dispute the fact that no identification parade has been held, since the other co-accused were unknown persons.

6 Perused the papers. It is the prosecution case that on 23rd

August 2016, at around 2:30 p.m, Bharat (deceased) left his house to meet Devram Nikhade, Santosh Nikhade, Babu Shaikh and Monika Pasare at Aman Hotel, Shirol. At about 7:45 p.m, Bharat spoke to his wife-Hirabai on the phone and informed her that some warrant was issued against both of them by a Court at Kasara and that he was going to Kasara Police Station. However, Bharat did not return home, pursuant to which, Bharat's wife-Hirabai lodged a missing complaint with the Kasara Police Station on 26th August 2016. On 12th September 2016, Bharat's son-Dinesh lodged an FIR with the Kasara Police Station, alleging offences punishable under Sections 365, 506 r/w 34 of the IPC as against Devram, Santosh, Babu and Monika. Pursuant to the said FIR, Devram and Santosh were arrested by the police and were released on regular bail, whereas, Babu and Monika were granted pre-arrest bail by the Sessions Court. On 20th June 2018, a skeleton of a male along with a motorcycle was found in river Vaitarna. The complainant (son of Bharat) and his mother (Hirabai) identified the motorbike as belonging to Bharat. Bharat was also identified on the basis of his shirt and shoes. Iron plates, grinding stone, plastic sacks filled with stones and nylon rope were found at the spot. The skeleton was sent for DNA profiling. Pursuant thereto, the police added Sections 302, 201 and 120B of the IPC to the aforesaid FIR. After Section 302 was added, the police arrested accused nos. 1 to 6. During the course of their

interrogation, name of co-accused-Babu Bhagat emerged as being an accused in the said crime. Sitabai, who allegedly gave *supari* to the co-accused-Babu Bhagat was also arrested in the course of investigation.

7 According to the prosecution, it transpired during investigation, that co-accused Sitabai felt that Bharat (deceased) had done black magic on her husband, as a result of which, her husband expired, pursuant to which, she gave *supari* to the co-accused-Babu Bhagat to kill Bharat. A perusal of the statements of two witnesses i.e. Kadam Malu Ughade (Sitabai's neighbour) and the statement of Dundaram Soma Shinge show that they had seen co-accused-Babu Bhagat, along with 4-5 others, forcing the deceased-Bharat to sit in the car, after which, Bharat went missing. Admittedly, the applicants have not been named by the said two witnesses. Similarly, the statement of Jafar Shah, who allegedly heard the conspiracy, does not disclose the name of the applicants. No identification parade has been held. The applicants are in custody since 26th July 2018. Investigation is complete and charge-sheet is filed.

8 Considering the aforesaid, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicants be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- each, with one or two sureties in the like amount;
- (ii) The applicants shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) The applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicants shall inform their latest places of residence and mobile contact numbers and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicants to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vi) The applicants shall file their respective undertakings with regard to clauses (ii) to (v) in the trial Court, within two weeks of their release;

(vii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' bail.

9 The application is accordingly disposed of.

10 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.