

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1079 OF 2018
IN
CRIMINAL APPEAL NO.1023 OF 2017

Vijesh Pawanraj Sanghvi	Applicant
vs.	
The State of Maharashtra	Respondent

Mr. P. Janardhanan with Saurabhsai Ganesan for the Applicant.
Mr. H.J.Dedhia, APP. for the State.

CORAM: B.P.DHARMADHIKARI &
MRS.SWAPNA S. JOSHI, JJ.
DATE : 31st July, 2019

P.C.

1. We have spent considerable time to understand the facts. Applicant-original accused No.1 argues that he had been to police station on 13.5.2013 itself in a car of P.W.6 with accused No.2 as nephew of accused No.2 was reported to be abducted. The car was then detained by police but accused No.1 and accused No.2 were permitted to go. Accused No.1 has been arrested for the first time on 14.5.2013. The police authorities have fabricated a false case to suite

their purpose. The motive that accused needed amount to clear the betting dues in cricket is not established as no such betting business itself has come on record. The contention that victim and accused No.1 were seen in mobile gallery together is erroneous since both of them reached there independently. Accused No.1 had left mobile shop twice and at that time victim boy did not come outside with him. The story of investigating officer that after leaving mobile shop accused No.1 gave call on mobile of the father of deceased from the telephone booth located 1 k.m. away is again erroneous considering the short span of time for which accused No.1 was out of shop. Accused No.1 had gone to mobile shop to replace his regular mobile sim with nano car and he disclosed his identity and also gave driving licence to support it. It is further urged that prosecution has not established presence of accused with deceased victim in a car at toll booth at Vashi in a similar vehicle going towards Goa of which registration number could not be seen and finding of trial court that accused and boy are seen occupying that car are perverse as CCTV footage does not show any such occupants.

2. The evidence of P.W.15 and P.W.16 is also challenged by

pointing out that said evidence has been procured/planted. Police authorities first contacted them and before they gave their statements, accused was taken to them and they identify him. Submission is that right course would have been to hold test identification parade but that has been avoided. Support is taken from evidence of P.W.6 owner of the car to show that the said car was also in police station on 13.5.2013 night itself. The station diary entry at Exh. 231 is also relied upon for this purpose.

3. Learned APP on the other hand states that when deceased boy was on phone with his mother, he received a phone call asking him to come to receive the keys. The boy did not leave immediately and that call was repeated after sometime. At that time P.W.30 received it and thereafter victim left the residence with a guest.

4. She states that after some time a call came referring to keys and enquiring about mobile number of father of victim i.e. of her husband. That number was communicated to the caller by her. After some time, her husband called and enquired about the whereabouts of his son (victim). He then told P.W.30 that he had not given any key to anybody and he received a call demanding ransom as their

son was in custody of the caller. Learned APP points out that in mobile gallery deceased and accused were present and were seen standing beside each other and deceased was then wearing a red colour shirt. CCTV footage at Vashi Toll booth shows similar vehicle in which boy was sitting wearing red colour shirt. He then submits that the place near Parle river where murder was committed and the place where the body was thrown were discovered under Section 27 of the Evidence Act by accused. He relied upon evidence of P.W.Nos. 15 and 16 for this purpose.

5. We find that these witnesses have identified the applicant accused. P.W.15 states that he arranged for cigarette and sold match box and also vegetable knife to accused and at that time small boy was sitting on front seat of the car. P.W.16 has deposed that he had given his mobile to accused on 13.5.2013 for making a phone call as battery of mobile of accused was down. He talked on that mobile for about 2-3minutes after going away from the shop and then returned the mobile and paid him Rs.10/-. He has identified that person on 17.5.2013 when police brought him to his shop. P.W.15 also states that on 17.5.2013 police brought that person to their shop and he identified him.

6. The documents to which our attention has been invited show that on 15.5.2013 i.e. after arrest of accused No.1 disclosure statement under Section 27 of the Evidence Act has been recorded. In Exh. 70, which is recovery panchanama following that disclosure it is recorded that accused led panch witnesses and police to a lane by name Sutar Galli and then started walking on street. While walking he saw Honda city car by the side of street and disclosed that the said Honda city car was used by him for abducting and killing. In Exh.70, police mention that Honda city car was then seized.

7. These panchanamas at Exh.s 69 and 70 have been recorded between 16 hours to 19.50 hours on 15.5.2013. But then Exhibit-231 is a station diary entry entered at 9.30 a.m. where there is a reference of said motor vehicle and it mentions that forensic examination of that motor vehicle was necessary and for that purpose the forensic team along with police authorities had left the spot.

8. Deposition of P.W.6, particularly Para 11, shows that he had gone to police station to verify his car on 13.5.2013 in the night at

about 12.00 O'clock as he was called by police. He saw that car standing in the compound of police station. Accused No.1 Vijesh and accused No.2 Himanshu did not meet him there. He also did not have any occasion to meet them on 14.5.2013.

9. This position on record therefore prima facie lends credence to case of applicant accused. We are therefore, inclined to release him on bail on following terms and conditions.

- (i) The applicant shall be released on bail on his furnishing PR bond in the sum of Rs.20,000/- with one or two sureties in the like amount after paying fine amount;
- (ii) He shall also place on record on affidavit address at which he shall be always available during pendency of this appeal with his contact number;
- (iii) Similar details in relation to his surety/s shall also be furnished;
- (iv) He shall report on first working Monday once after interval of two months to Superintendent/Registrar of the trial Court;

- (v) Vakalatnama filed in appeal shall be kept alive and valid during pendency of appeal. He shall not be entitled to any fresh notice at the stage of final hearing.
- (vi) Failure to observe terms and conditions of this order shall entitle respondent to take him in custody;
- (vii) Application is accordingly allowed and disposed of.

(MRS. SWAPNA S. JOSHI, J)

(B.P.DHARMADHIKARI,J.)

(Original order dated 31.7.2019 Corrected pursuant to speaking to minutes order dated 13.8.2019)