

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1132 OF 2019
IN
CRIMINAL APPEAL NO.886 OF 2019

Zahir Mohammad Savajmiya Sayyad ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Virendra V. Pethe for the Applicant/Appellant.
Mr. J. P. Yagnik, APP for the Respondent/State.

CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.
DATE : AUGUST 09, 2019

P.C.:

Original accused no. 2 has approached this court for bail in appeal under section 374(2) Cr.P.C. challenging the judgment and order sentencing him to life imprisonment for committing murder of one Prakash along with other accused persons. The judgment is dated 29.03.2019.

2. Counsel for the applicant states that as per prosecution story, deceased Prakash happened to be a driver of Bolero vehicle of one Dashrath Bhoir. The jeep was hired by accused

persons and then after committing the murder of driver Prakash, it was taken to Gujarat and sold to accused no. 4.

3. Learned counsel for the applicant states that as per prosecution, accused no. 2 was occupying Santro car which was following the Bolero. The trial court has accepted this circumstance and discovery of the Santro car under section 27 of the Evidence Act as sufficient to convict him with other accused persons with aid of Section 34 IPC.

4. Learned APP has taken us through the relevant observations of the trial court. He submits that the Santro car was following the Bolero and accused no. 2 was occupying it has in discovery memorandum under section 27 of the Evidence Act accepted his involvement. Santro car has been found at his instance.

5. It is not the case of the prosecution that there was any accident between Santro car and Bolero jeep. The apparent connection between these two vehicles is therefore missing. Merely because Santro car was following Bolero jeep, it does not mean that the occupants in the Santro car are connected with the occupants in Bolero jeep. There is no evidence to show any

link between the occupants in Santro car and occupants in Bolero jeep.

6. Learned counsel for the applicant has submitted that only at one toll naka in CC tv footage, Santro car is seen behind Bolero jeep. We do not wish to delve more into this aspect as the fact of mere Santro travelling on the public road behind Bolero jeep cannot be seen as an incriminating circumstance at all.

7. The IO has relied upon section 27 disclosure made by accused no.2. That disclosure only leads to Santro car. Unless and until, Santro car is shown to be involved and connected with the crime in some way or the other, connection of accused no. 2 with other accused persons cannot be established.

8. We therefore, find applicant/accused no. 2 entitled to be released on bail on 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, Palghar on first working Monday after 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.)