

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3037 OF 2018

Umesh @ Papu D.Raut

..Applicant.

vs.

State of Maharashtra

..Respondent.

Mr.Satyavrat Joshi with Nitesh Mohite for Applicant.

Mr.A.R. Kapadnis, APP. for State.

Smt. Kunda Gawde, ASI from Talegaon Dabhade Police Station present.

CORAM : P.N. DESHMUKH, J.

DATE : 12th March, 2019

PC :

1. The original accused No.3 Umesh @ Papu Digambar Raut involved in CR No.417 of 2018 registered for offence punishable under Sections 302 and 201 read with 34 of the Indian Penal Code by Talegaon Dabhade Police Station, District Pune has filed this application for bail.

2. Admittedly on investigation charge sheet is filed. Applicant is in custody since 9.7.2018. Learned counsel for applicant submitted that only involvement of applicant as could be found from the charge sheet and the documents on record is of original accused Nos. 1 and 2 having used four wheeler owned by the applicant for commission of murder of Prakash Nihal and had contended that even said case of prosecution as set out against the applicant is full of doubts, and to further substantiate contention; the learned counsel for applicant referred to documents filed along with the application particularly the seizure panchanama of hard disc in respect of the vehicles which had passed through Urse Toll Plaza situated on Bombay Pune road on the date of incident as well as on details of car alleged by prosecution to be owned by the applicant and by referring such documents has contended that considering the same which is the only evidence against applicant, his involvement cannot be made out in the crime and prays that application be allowed by imposing suitable condition.

3. While opposing the application, the learned APP. submits that the car provided by the applicant for the purpose of commission of present crime came to be seized under joint memorandum statement of co accused Dilip and Navnath and has thus made an attempt to co-relate the applicant with the present crime. Learned APP. however could not point out any other evidence against the applicant as aforesaid.

4. Perusal of documents filed with the charge sheet would reveal that on the basis of the information to the police by one Subhash Thakar received to him from Namdeo Karke of whose no statement is recorded. AD is registered on 5.7.2018. On the same day complainant Gajanan Shinde cousin brother of deceased Prakash Nihal lodged report upon which the present offence is registered. As per the information of Subhash Thakar who was informed by Namdeo Kakar about one dead body of male person be found lying below the bridge situated at Pune Bombay road, having injury on head. Accordingly complainant on visiting the spot identified the dead body to be of his

cousin deceased Prakash and thus lodged report as aforesaid against the unknown person.

5. From the charge sheet, it appears to be the case of the prosecution that, one Meera Pande was real sister and cousin sister of original accused Nos.1 and 2 respectively. Before her marriage, she was having love affair with deceased and for that reason accused wanted to do away deceased Prakash and accordingly original accused Nos.1 Dilip Nihal and accused No.2 Navnath Nihal had obtained applicant's car for using the same in commission of present crime and reached to house at about 3.40 a.m. of their sister Meera, and asked her to make a phone call to deceased, calling him to her house. Accordingly, on arrival of deceased original accused Nos. 1 and 2 made him to sit in the car and took him towards the Bombay side by Bombay Pune Road, and after crossing of Toll Plaza, committed his murder by strangulation and dispose of the dead body by throwing it from the bridge.

6. Thus, the only averment, even according to prosecution as revealed from charge sheet is of co-accused Dilip and Navnath using applicant's car for commission of crime. The entire charge sheet nowhere reveals that the applicant was having knowledge of commission of this crime before providing car to co-accused persons nor he is found to have participated in the commission of crime. Moreover, though according to the prosecution, applicant's car was used as aforesaid which came to be seized at the instance of co-accused under recovery panchanama same is described as Indigo car having registration No. MH-21-V-4563. From the car details obtained during the course of investigation, from the office of RTO, Jalna the above numbered vehicle is reported to be owned by one Dilip Mogre. No statement of said Mogre is recorded. In the absence of his statement it cannot be said if above numbered vehicle belongs to applicant as set out by prosecution. On the contrary from the registration particulars said vehicle is found duly registered in the name of Dilip Mogre.

7. For establishing applicant's involvement by providing his car, though prosecution has further relied upon panchanama in respect of CCTV footage of vehicles passing through the Urse toll plaza towards Bombay side during the period from 2.30a.m. to 6.00 a.m on 5.7.2018. Perusal of said document would reveal that at 5.24 a.m. one vehicle which is stated to be red colour Indigo car had passed through the Toll Plaza. Considering above evidence it cannot be the same vehicle alleged to be owned by the applicant which had passed through the Toll Plaza as accordingly registration particulars, colour of motor car is referred to as royal blue, thus, the case of prosecution is doubtful even on this count.

8. Having considered the available evidence and material collected against the applicant, as aforesaid same does not inspire confidence at all to establish applicant's involvement in the present crime, who is in custody since 9.7.2018, application is liable to be allowed by imposing suitable conditions as per the following order.

ORDER

- a) Applicant Umesh @ Papu Dagambar Raut shall be released on bail in CR No.417 of 2018 registered for offence punishable under Sections 302 and 201 read with 34 of the Indian Penal Code by Talegaon Dabhade Police Station, District Pune on his executing PR bond in the sum of Rs.50,000/-with one surety in the like amount.
- b) On being released on bail, the applicant shall mark his presence on first day of each month with Investigating Officer at Talegaon Dabhade Police Station, and in addition to that shall mark his presence on 15th day of each month with the police station within whose jurisdiction he is residing at Aurangabad until further order.
- c) Sr. P.I. / I.O. of Talegaon Dabhade Police Station shall ascertain from Applicant his address at Aurangabad and shall inform said Police Station of this order, for its due compliance.
- d) Learned Trial Court shall not get influence with the observations as aforesaid and shall independently evaluate the evidence at the time of trial.

(P.N. DESHMUKH, J.)