

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

CRIMINAL BAIL APPLICATION NO.444 OF 2020

Mirasaheb @ Mirya Ibrahim Mujawar	...Applicant
Vs	
The State of Maharashtra	..Respondent

Mr. Kuldeep Patil a/w. Sayali Dhuri and Shashank P. Borade, Advocate
for the Applicant.

Mr. H. J. Dedhia, APP for the Respondent/State.

**CORAM : C.V. BHADANG, J.
DATE : 16th SEPTEMBER, 2020
(Through Video Conferencing)**

P.C.

. This is an application for bail.

2. The applicant (accused No.2) alongwith co-accused is facing prosecution for the offence punishable under Section 302, 201 and 120(B), 384 r/w. 34 of the IPC for having intentionally caused the death of one Sagar Manik Pathrut.

3. The prosecution case as disclosed from the complaint of Akash Pathrut, who is the brother of the deceased, is that there was a previous enmity between two groups, one comprising of the applicant and his friends Omkar Sanmukh (accused No.1) and Ibrahim Mujawar (accused No.3) on one hand and the deceased Sagar Pathrut and his friends namely Sagar Pujari, Sanjay Chawadi and Vishal Hatekar on the other.

Previously, on 22/9/2018, accused No.1 Omkar Sanmukh had lodged a compliant attributing assault against the deceased Sagar Pathrut and his friends. It is said that apprehending trouble, the deceased had gone to reside with his maternal aunt at Gokak (Karnataka) for two months. It is said that the applicant alongwith the co-accused were visiting the house of the deceased and inquiring about his whereabouts. It is also alleged that the applicant and the co-accused were making a demand of Rs.20,000/- with the deceased and his family members in order to withdraw the complaint dated 22/9/2018 lodged by Omkar Sanmukh.

4. On 8/8/2019, the deceased is alleged to have informed his mother and his brother that the applicant and the accused Omkar Sanmukh had forcibly taken away the Splendor motorcycle belonging to the deceased. It is said that on the following day, the co-accused Irfan and the present applicant went to the house of the deceased and collected the papers of the motorcycle.

5. It is the material case that on 11/8/2019, at about 10.00 a.m. the deceased left his house and did not return till night. However, none of his family members could establish contact with him, as the deceased was not carrying a mobile. The mother and the brother of the deceased made inquiry about the deceased, with the grandmother of the deceased who is staying at MHADA Colony and with other relatives. However, they could not trace the deceased.

6. On 25/8/2019, the police from Miraj Rural Police Station, went to the house of the deceased and informed that on 17/8/2019 the dead body of an unidentified male, was found in decomposed condition, in a

stream under a bridge at village Waddi. The complainant and his mother went to the Police Station where they were shown photograph of the dead body and the clothes, as by that time the dead body was already cremated. On the basis of the photograph and the clothes, the dead body of Sagar was identified. On the following day i.e. on 26/8/2020, Akash lodged a complaint naming the present applicant and the co-accused to be the persons responsible for the death of Sagar, on account of the previous enmity and the demand of Rs.20,000/-. On the basis of the said complaint, an offence came to be registered and after investigation, the chargesheet is filed.

7. The learned Sessions Judge has rejected the application of the applicant seeking bail, twice, i.e. during the course of the investigation and after filing of the chargesheet on the ground that the offence is serious and there is circumstantial evidence showing prime facie involvement of the applicant alongwith strong motive.

8. I have heard the learned counsel for the applicant and the learned APP for the State. Perused record.

9. On hearing the learned counsel for the parties, it appears that the case of the prosecution is essentially based on circumstantial evidence. The principal circumstances are in the nature of last seen together, recovery of the motorcycle and the extra judicial confession.

10. I have gone through the statements of the witness Rajesh Pahuja who is having a wine shop under the name and style as 'Suresh Wine Shop' at Miraj and Mr. Sunil Bangar. Prima facie, from the statement of

Rajesh Pahuja, it appears that it was the police who had taken the co-accused Omkar Sanmukh to the wine shop of Rajesh Pahuja and all that this witness is stated is that he remembers the deceased alongwith Omkar Sanmukh having come to his wine shop at 7.30 p.m. and 10.00 p.m. on 11/8/2019. Prima facie, it appears that this witness learnt from the police that the person who had accompanied the deceased is Omkar Sanmukh. Even so far as the alleged extra judicial confession is concerned, the statement of Sunil Bangar does not show that there was any person specifically named who was done to death allegedly by the applicant and the co-accused. Even so far as the recovery of the motorcycle is concerned, prima facie, the statement of Salim Bhilawade would show that there was some amount which was borrowed by the applicant and the co-accused and the motorcycle was handed over for paying to the owner of a sheep which the applicant and the co-accused had allegedly stolen while grazing. Prima facie, having regard to the over all circumstances, I find that the applicant can be released on bail subject to conditions.

11. It is made clear that the observations made herein are essentially of a prima facie nature, for the limited purpose of deciding the application for bail. The learned Sessions Judge shall not be influenced by the said observations at the trial.

12. In the result, the following order is passed.

ORDER

1. The applicant shall be released on bail on executing a PR. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.
2. The applicant shall undertake to remain present before the learned Sessions Judge during the course of the trial.
3. The applicant shall not directly or indirectly make any contact or influence or otherwise tamper with the prosecution evidence / witnesses.
4. The bail bonds to be furnished before the learned Sessions Judge.
5. The criminal application is disposed of in the aforesaid terms.

C.V. BHADANG, J.