

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

BAIL APPLICATION NO.364 OF 2020

Hareshwar Gajanan Kudu ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. S.V.Marwadi i/by Mr. N.N.Nadar for the Applicant.
Ms. P.P.Shinde , APP for the Respondent-State.
PSI Yogesh S. Khonde attached to Palghar P.Stn.
Present.

CORAM : SANDEEP K. SHINDE J.
DATE : 24th FEBRUARY, 2020

P.C. :

Heard.

2 Applicant is seeking his enlargement on bail in Crime No.124 of 2019 registered with Palghar Police Station for the offences punishable under Sections 302, 364, 365, 120B, 201 and 34 of the Indian Penal Code, 1860 ('**IPC**' for short). On 9th May, 2019 subject offences were registered against the unknown persons by one Ajay Raju Mhaske, who was working as

supervisor in company known as Alfa Metal wherein Arif Ali (Deceased) was owner of this company. Ajay Mhaske had reported that one Dipak Dalvi worker in the Alfa Metal, told him that on 9th May, 2019 at 13.12 hours, three unknown persons had kidnapped Arif Ali in white coloured Scorpio while he was travelling in a rickshaw from Kashipada. Upon receiving this information, Ajay Mhaske tried to search Arif Ali and finally find the auto-rickshaw in which he was travelling when the alleged kidnapping occurred. Ashok Mali, rickshaw driver also confirmed the fact of the alleged kidnapping.

3 It is the prosecution's case that accused no.1-Prashant Sankhe was harbouring a grudge against the deceased on account of business rivalry and had a plan and conspired with co-accused to eliminate the deceased.

4 It is the prosecution's case that in furtherance of the plan, the deceased was abducted in white coloured Scorpio car and was strangled therein and, thereafter efforts were made to burn his body at different locations.

5 The role attributed to the applicant is that he was present in the meeting called by the accused no.1 wherein plan was hatched to eliminate the deceased. The reliance for which has been placed on the statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 ('**Cr.P.C.**' in short) wherein the statement of one Sizin Gopinathan, suggests that accused no.1 had held the meeting, which was attended by six persons and the applicant was one of them. However, it appears from the evidence/material that the applicant did not participate in kidnapping the deceased. Therefore, case of the prosecution is resting on circumstantial evidence.

6 Prosecution has further alleged that this applicant had purchased petrol, which was allegedly used in burning body of the deceased. In support of this circumstance, prosecution has relied on the CCTV footage installed at the petrol pump, which showed that the applicant had purchased petrol on 9th May, 2019. However, there is no evidence to suggest that the petrol was purchased with an intention to use it in burning the dead-body of the deceased. Though it is alleged thereafter, applicant was found in the company of the co-accused Shiva Thakur in a hotel, that itself is not an incriminating circumstance.

7 I have perused the final report including the statements of witnesses, Sazine Gopinathan recorded under Section 164 of the Cr.P.C. His statement suggests the presence of the applicant in the meeting summoned by the accused no.1 wherein the conspiracy was hatched to eliminate Arif Ali. This statement also

suggests that more than seven persons were present in the meeting however, some of them were asked to go out of the meeting room. Prosecution has not clarified who were asked to go out of the meeting room and whether this applicant was present in the meeting allegedly called by the accused no.1. There is no other evidence to suggest, that the applicant was also sharing the intention for the commission of the alleged crime. Though reliance was sought on Call Detail Records between the applicant, accused no.1 and Shiva Thakur, in my view, material on record is not sufficient to continue custody of the applicant furthermore. The learned APP on instructions submits that there are no criminal antecedents against the applicant. Applicant is in custody since 15th May, 2019. Though investigation is over and final report has been filed, trial is not likely to commence or conclude in near future. However, applicant's presence for trial can be secured by imposing suitable conditions.

8 That for the reasons stated here-in-above,
application is allowed. Hence, the following order:

ORDER

(i) The applicant be enlarged on bail in Crime No.124 of 2019 registered with Palghar police station, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(ii) The applicant shall report to the Investigating Officer of the concerned Police Station on the second and fourth Monday of each month between 11:00 a.m. to 1:00 noon commencing from March, 2020 till the charge is framed;

(iii) The applicant shall inform his latest place of residence and contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer of the concerned Police Station;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

9 The application is accordingly allowed and disposed of.

10 It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose

of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)