

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.624 OF 2020**

Suraj Navnath Kate

.. Applicant

versus

The State of Maharashtra

.. Respondent

...

Mr. Satyavrat Joshi for the applicant.

Mr. P.H.Gaikwad, APP for the State.

**CORAM: SMT. BHARATI DANGRE, J.
DATED : 3RD DECEMBER, 2020**

P.C:-

1. The applicant came to be arrested in relation to C.R.No.0093 of 2019 for the offence punishable under Section 302 read with 34 of Indian Penal Code registered with Kamshet Takve Police Station, Pune Rural. The applicant came to be arrested on 04/04/2019 and seek his release on bail by advancing a submission that on completion of investigation, the chargesheet has been filed and on perusal of the same, the role attributed to the applicant is merely of aiding the other accused persons and by no stretch of imagination it contain any material which would indict him for the offence under Section 302 of Indian Penal Code.

2. The Learned Counsel Mr. Satyavrat Joshi appearing for the applicant submit that the applicant is a young boy aged

19 years, with no antecedents and even accepting the case against him as compiled in the chargesheet that he assisted the accused persons by providing the crane for pulling the Xylo jeep which was carrying the dead body of the deceased and in their circumstances, according to Mr. Joshi, he will at the most be indicted under Section 211 of the Indian Penal Code, but he not under 302 of the Indian Penal Code.

3. With the assistance of the Learned Counsel Mr. Joshi and the Learned APP Mr. Gaikwad, I have perused the chargesheet. The FIR is lodged by Yusuf Baban Shaikh, on 03/04/2019 which in great detail narrate the incident dated 02/04/2019 when Khandu Kute came to his house and called his nephew Ayub and it is alleged that he was accompanied with four unknown persons in the age group of 20-30 years. Ayub was made to sit in a Xylo jeep as per the version of the complainant, since he did not return home the next morning and at around 12 O'clock, information was received that a dead body was being transported in a Xylo car. This prompted him to file the complaint after identifying that the dead body was of Ayub. He named two accused persons specifically and gave description of four unknown persons. The supplementary statement of the complainant is recorded on 04/04/2019 when he added to his earlier version the information gathered by him to the effect that when the accused persons were arrested, they had revealed that when the dead body was being transported

into a Xylo jeep and when the jeep was proceeding towards Pimploli village, it got stuck in a ditch. At that time, the applicant was called there alongwith his towing van. It is alleged that the applicant drove his towing van to the spot and attempted to assist the accused persons to pull the Xylo jeep and he possessed knowledge that other accused persons had murdered Ayub and his body was kept in the Xylo.

4. The Learned APP had invited my attention to the statement of applicant's mother Mangal Kate, recorded on 10/12/2019. She had referred to the happenings in the night of 02/04/2019 and has stated that at around mid-night, her son received a phone call from Khandu Kate and she has stated that her son was called by Khandu for pulling up Xylo jeep since there was no diesel in the said jeep and it is the mother of the applicant who has given a statement that the applicant had knowledge that a dead body was being transported by the accused persons in the Xylo jeep. Perusal of the said statement would however, reveal that the mother of the applicant had narrated the reason how her son was indicted in the offence and alleged to have knowledge that the accused persons had murdered Ayub and was plying his dead body in the Xylo jeep.

Even if, accepting the statement of the mother as well as the statement recorded under Section 164 of Criminal Procedure Code of two witnesses Yusuf Shaikh and Mumtaz Shaikh, the role must attributed the applicant his assisting the

other accused persons in moving their vehicle which were used for carrying the dead body. However, whether the applicant had the knowledge that the vehicle was having dead body is a matter of trial and will have to be established by the prosecution at that stage. The applicant could be said to have committed an offence of not providing information even if he was aware that such an offence has been committed. In any contingency, the chargesheet has been filed, he is not responsible for the offence of homicide. He has been arrested on 04/04/2019 and in the backdrop of the material contained against him in the chargesheet, since the investigation is now complete, he is entitled to be released on bail. Hence, the following order:

ORDER

- (a) The application is allowed.
- (b) The Applicant – Suraj Navnath Kate shall be released on bail in C.R.No.0093 of 2019 registered with Kamshet Takve Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to

dissuade him from disclosing the facts to Court and the applicant shall not tamper with evidence of prosecution.

(d) The Applicant shall attend the trial on every date unless exempted.

5. The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J