

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

BAIL APPLICATION NO.2347 OF 2019

Nikhat Khan ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Ms. Falguni Brahmbhatt with Ms. Rukhsar Ansari for the Applicant.

Mr. Umeshchandra Yadav, SPP with Ms Rutuja Aambekar , APP for the Respondent-State.

Ms. Lata Sutar, Police Inspector attached to Tilak Nagar P.Stn. Present.

CORAM : SANDEEP K. SHINDE J.
DATE : 20TH JANUARY, 2020

P.C. :

Heard.

2 It is an application under Section 439 of the Code of Criminal Procedure, 1973.

3 Applicant is accused no.7 in the Crime No.571 of 2018 registered with Pant Nagar Police Station for the offences punishable under Sections 302, 394, 363, 364, 365, 120B read with Section 34 of the Indian Penal Code,

1860. Applicant came to be arrested on 11th December, 2018. There are seven accused in the subject crime. Accused No.6 has been released on bail. Case is committed to the Court of Sessions as investigation is over.

4 Prosecution case rests on circumstantial evidence.

5 Rajeshwar Udani (deceased) had gone missing from November, 28th after he left his driver on the Eastern Highway at around 21 hours, while his body was found on December 7, 2018. It appears, that in order to honey-trap Udani, accused wanted a young girl. Accused No.1-Sachin Pawar knew, accused no.6 and asked her to rope any young woman. Accused No.6 allegedly told accused no.1 about Nikhat Khan (Applicant herein). It appears, applicant was told, she will be paid once the ploy worked. Accused No.1-Sachin Pawar (Master Mind) is believed to have wanted to shoot video of Udani with applicant, which could have been used to black-mail him later. Motive alleged is that Udani

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was trying to get close to Sachin's live-in partner.

6 It is transpired in the investigation that on 28th November, 2018 at 5.45 p.m., applicant was seen in the company of accused nos.1 and 6 at CCD, Andheri; CCTV footage corroborates this fact. A certificate under Section 65B of the Indian Evidence Act, 1872 is produced. It is further revealed in investigation, that on the same day, accused no.1 had arranged, i10 white coloured car for kidnapping Udani, as is evident from the statement of, Swati Nirav Desai. In furtherance to execution of plan on 28th November, 2018 in late hours, applicant allegedly picked up, Udani from Vikroli. Well before that Call Detail Records show, applicant in order to communicate pre-agreed message, had given 'missed' call to Udani, from the cell number allegedly provided to her by accused no.2, as it appears from the statement of Vishal Pandurang Parte, an employee of accused no.1. Soon after i10 car left Vikroli with Udani and crossed Airoli bridge, accused no.2 and others got into i10 car. It is alleged, accused were carrying

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cake laced with sedatives. It is alleged when Udani refused to eat cake, which was laced with sedatives, Dinesh (Accused No.2) was trying to put it into his mouth and accused in car smothered him in scuffle. Later on 7th December, 2018, Udani's body was found in the hilly area close to Dehrang Dam in Panvel. Opinion as to cause of death is *"evidence of nasal bone fracture of hyoid bone suggestive of death due to asphyxia by smothering with manual strangulation (Unnatural)"*.

7 Evidence shows Sachin Pawar (Accused No.1) used i10 white coloured car to execute the crime as could be seen from the statement of Swati Nirav Desai (Car owner). It is the prosecution case that accused told Udani that they would all visit Panvel for birthday party and thus, had purchased cake laced with sedatives that were allegedly used to execute the plan to eliminate Udani. In execution of the conspiracy, Sachin Pawar lured Udani to come to Vikroli from where applicant picked him in i10 car and when they crossed Mulund-Airoli bridge, accused no.2 Dinesh Pawar

and two others joined them at late hours of 28th November, 2018. It may be stated that Dinesh (Accused No.2) is suspended from the Mumbai Police Force against whom offences of serious nature have been registered. Investigation reveals, i10 car was driven by the accused no.5.

8 The learned counsel for the applicant argued;

- (I) Applicant has been falsely implicated;
- (ii) even assuming, but without admitting that applicant was and seen in the company of accused nos.1 and 6 at CCD, Andheri on 28th November, 2018 but that itself is not sufficient to rope in applicant in the subject crime.

. Submission, therefore, is that there is no evidence at all, even to suggest, that the applicant allegedly picked up the deceased from Vikroli in i10 car and proceeded to Panvel in company of other accused via Mulund-Airoli bridge. The learned counsel for the applicant equally denied that applicant had ever attempted to contact the deceased, leave aside the missed call as

alleged. It is contended that the prosecution has not conducted Test Identification Parade. On these grounds, bail is sought.

9 Evidence suggests and shows well before 28th November, 2018, a conspiracy was hatched by the accused in order to honey trap Udani and the applicant was roped in through accused no.6. Prosecution has relied on picture of text messages sent by accused no.1 to accused no.3 on 22nd November, 2018. This text message shows, photographs of accused nos.6 and 7 with tagged line "Mom and Girl"; next picture text message allegedly sent by accused no.4 to accused no.1 shows photographs of accused nos.6 and 7 with the tagged line "Plan set ahe", i.e., "The plan is set". Prosecution has argued after applicant was roped in order to honey trap Udani, picture text messages were forwarded to other accused so as to enable them to identify applicant. Next circumstance is the meeting between accused nos.1,6 and 7 at CCD, Andheri on 28th November, 2018 and the CCTV footage retrieved

and further supported by the certificate under Section 65B of the Indian Evidence Act, 1872.

10 Third circumstance is that, accused no.1 had arranged i10 white coloured car on the very day, i.e. 28th November as evident from the statement of Swati Nirav Desai. Yet next circumstance is, Call Detail Records, reflecting missed call received by Udani before he was picked up at Vikroli in i10 car allegedly by the applicant. This missed call was from a cell number allegedly provided to the applicant by accused no.2 as could be seen from Vishal Parte, who is an employee of accused no.1. Next circumstance is the statement of Samiksha Navneet Chavan, friend of accused no.2. Her statement was recorded on 9th December, 2018; whereas accused was apprehended on 11th December, 2018. In the statement, Samiksha Navneet Chavan disclosed, that, her father was residing at Murud. This witness was nurse and it appears, she had managed to procure two pain killers and two seditives injunctions at the instance of accused no.2.

Prosecution thus alleged, these seditive were laced in the cake allegedly used to execute the plan to eliminate Udani. Be that as it may, statement of Samiksha shows, accused no.2 and the applicant had travelled in i10 white coloured car in the night intervening 28th and 29th November, 2018 to Murud and accused no.2 had requested this witness to make arrangements for the stay at Murud. It appears, this witness requested her father Pandurang Patil to make necessary arrangements at Murud. Samiksha stated in her statement that her father had disclosed applicant's name to her as 'Nikhat Khan', who had come to Murud with accused no.2 in the night intervening 28th and 29th November, 2018. Her statement has further revealed that on the second day, i.e., 29th November, 2018, accused no.2 requested Samiksha to arrange for another car to travel back to Mumbai. Accordingly, Samiksha arranged for Innova vehicle. Statement of driver of Innova has been recorded, which reveals that on 29th November, 2018, he drove Innova from Murud to Mumbai with two persons. Besides,

there is statement of Pandurang Patil (Father of Samiksha) in whose house, applicant and accused no.2 had stayed in the night intervening 28th and 29th November, 2018. Admittedly, Samiksha's statement also shows that accused no.2 had requested her to arrange for washing i10 car.

. Therefore, statements, of Samiksha, Pandurang Patil (her father), driver of Innova vehicle indicate that in the night intervening 28th and 29th November, 2018, accused and the applicant had travelled in i10 white coloured car, stayed at Murud, managed to wash car and returned to Mumbai in Innova car. It is the same i10 white coloured car, which was arranged by the accused no.1 allegedly used to kidnap the Udani and then, seized from Murud.

11 Besides, from the statement of Samiksha, it is revealed in the investigation that the applicant and accused no.2 had purchased new clothes at Murud, which were discovered on the voluntary disclosure made by the

applicant. Statement of shop-keeper corroborates this fact. Additionally on voluntary disclosure of accused no.2, remains of cake and parts of mobile, which were allegedly burnt were recovered.

12 Thus, in view of the evidence brought on record by the prosecution, complicity of the applicant in the subject crime is implicit. Offences alleged against the applicant are punishable with life imprisonment or death. Application is, therefore, rejected.

13 It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)