

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

CRIMINAL BAIL APPLICATION NO. 2445 OF 2019

Hussain Anis Momin @ Mohd. Hussain ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. L. M. Shukla, Advocate for the Applicant.

Ms. Veera Shinde, APP for the Respondent – State.

Mr. Rameshwar Prabhakar Darade, API Bhoiwada Police Station,
Bhiwandi, Thane City.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st DECEMBER, 2020.

PC :

1. This is an application under Section 439 of Code of Criminal Procedure, 1973 (“Cr.PC” for short) seeking bail in connection with C.R. No. I-181 of 2018 registered with Bhoiwada Police Station, Bhiwandi, Thane City for the offences punishable under Sections 364(A), 363, 302, 201 r/w. 34 of Indian Penal Code, 1860 (“IPC” for short) were added. Applicant was arrested on 3rd November, 2018.

2. The first informant is the father of victim boy aged about 15 years. The First Information Report (“FIR” for short) dated 29th October, 2018 was lodged against unknown persons. Victim’s body was found on 2nd November, 2018. It is the case of the prosecution that the accused had demanded the amount from the complainant.

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The threatening calls were made even after the death of victim boy. During the course of investigation accused were arrested. Charge-sheet is filed.

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. There is no evidence to show his involvement in the crime. The prosecution is relying upon the extra-judicial-confessions of the co-accused. There is no evidence to show that the applicant is involved in kidnapping the victim boy or killing him. The prosecution is relying upon the CDR. Although, the mobile phone bearing Number 8421489008 were allegedly seized from the possession of the applicant, the sim card was in the name of Samir Sayed. His statement has not been recorded. There is no evidence to show that the applicant had made call to the complainant. There is discrepancies in respect to IMEI last digit number referred as '0'.

4. Learned APP submitted that there is strong circumstantial evidence against the applicant. He was found in possession of mobile phone, CDR shows that the call was made from the said phone to the informant. On 30th October, 2018 the CDR location of the said phone at the time of call was shown to be in Gujarat.

5. The FIR is lodged against the unknown person. There is no eye witness to the incident. The case is based on circumstantial evidence. The statement of some of the witnesses recorded under Section 164 of Cr.PC refers to extra-judicial-confession of the co-accused. There is no such confession by the applicant. There is no other incriminating recovery at the instance of the applicant to show his complicity in the crime. Sim card appears to be in name of another person, whose statement has not been recorded. The prosecution is harping upon the CDR report. In the absence of any other strong evidence, bail cannot be denied to the applicant. He is in custody from 3rd November, 2018. Although, it is the case of the prosecution that the cell phone was sold by two persons. Witness Mukesh Prakash Chhablani identified the applicant and another person. However, there is no T.I. parade conducted by Investigating Officer and the identification was in front of the police when the accused were produced before him. There are no criminal antecedents against the applicant. Considering these circumstances, bail can be granted to the applicant.

6. Hence, I pass the following order.

ORDER

- i) Bail Application No. 2445 of 2019, is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. I-181 of 2018 registered with Bhoiwada Police Station, Bhiwandi on furnishing P.R. bond in the sum of Rs. 25,000/- (Twenty Five Thousand) with one or more sureties in the like amount;
- iii) The applicant shall report concerned police station once in a month on every first Saturday between 11.00 am. to 1.00 pm. till further order.
- iv) Applicant is permitted to furnish cash bail security in the sum of Rs.25,000/- for the period of eight weeks in lieu of surety;
- v) Bail Application No. 2445 of 2019 stands disposed of accordingly.
- vi) This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)