

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3337 OF 2018

Vikas Ajinath Bade, Age 23 years,
Occ.Nil, R/o.Villaghe Baherwadi,
Post Manoor, Tal.Shirur Kasar, Dist.Beed.

Applicant

versus

The State through Silvassa Police Station

Respondent

Mr.Satyavrat Joshi with Mr.Nitesh J. Mohite for applicant.
Mr.H.S.Venegaonkar for Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th February 2020

PC :

1. The applicant is seeking bail in CR No.135 of 2018 registered with Silvassa Police Station for offences under Sections 394, 302, 201 r/w 34 of Indian Penal Code. The FIR was lodged on 11th June 2018. Initially the offence was registered u/s 407 r/w 34 of Indian Penal Code.

2. The prosecution case is that on 30th May 2018 copper wire worth Rs.43,52,247=10 Ps was lodged in truck bearing No.GJ-15-UU-0355 owned by Parvez Khan Firoz Khan. Mr.Mohammad Ansar Azir was the truck driver. The copper wire was to be delivered to Cummins Generator Tec. Private Limited, Ahamednagar. The truck was equipped with GPS system. On 29th May 2018 the transporter checked the location of truck through GPS from his mobile phone and the truck was found proceeding towards Pune instead of Ahamednagar. Hence, information was provided to Chakan Police Station. On the basis of information, police attached to Chakan

Police Station intercepted the truck within the jurisdiction of Chakan Police Station. Inquiry was made with persons who were present in the truck. They gave their names as Vikas Ajinath Bade (applicant) and Sachin Ranjit Dhakane. The truck along with persons found in the truck were brought to Chakan Police Station. Copper wire and truck was seized under panchanama. The information was provided to Silvassa Police Station. It is alleged that the accused had entered into truck from rear side at Vapi. The accused then entered into cabin of truck driver. He was strangulated with the help of towel. The driver died. The truck was then driven and body of the driver was thrown at isolated place. The accused were arrested on 4th June 2018. On completing investigation charge sheet was filed.

3. Learned advocate for applicant submitted that the case against applicant is false. There is no eye witness to the incident. There is no evidence to establish the involvement of applicant in crime. Panchanama did not refer to seizure of mobile of applicant. There is no corroborative evidence to establish that accused-applicant has committed murder of the driver of vehicle. The confessional statement of accused is not substantive evidence and cannot be used to implicate the accused. There is no direct evidence against applicant and there has to be strong circumstances. It is not established that the applicant and the co-accused were present in the truck when it was intercepted by Chakan Police Station. At the time of interception of truck or apprehension of the inmates of the truck, Chakan Police did not record any panchanama.

4. Learned counsel for respondent submitted that involvement of applicant is established. During investigation it was revealed that

truck travelled from Vapi till Nashik. The accused concealed themselves on the rear side of vehicle and thereafter the driver was strangled and smothered by chocking his neck till he died. The accused drove the truck and threw the dead body of driver. They were taking the copper wire with truck. On information being provided to Chakan Police Station, the truck was intercepted. During investigation additional documents were collected, mobile phones were obtained, CDR and location of mobile phones was also obtained from service provider. The details of CDR and mobile location was received on 5th January 2019. The CDR specifically showed calls between both the accused before commission of offence. During the period of offence, mobile location continuously follows the path of truck travelling towards Nashik from Vapi. The presence of accused before and during travel establishes their involvement in theft and murder. Learned counsel relied upon statements of witnesses and documents of CDR, locators, FSL report etc. Learned counsel pointed out the statement of Amol Borate. He is attached to Chakan Police Station. He has stated that on 31st May 2018 information was received about the truck carrying copper wire and deviating from its destination. The truck was intercepted with person who was driving and cleaner. They did not give proper answers. The accused gave their names as Vikas Bade and Sachin Dhakane. It was learnt that complaint is lodged at Silvassa Police Station. The officers attached to Silvassa Police Station came to Chakan Police Station. The vehicle was given into their custody. The accused were also apprehended. It was revealed that the driver of the truck was killed by accused. Learned counsel also pointed out statements of Naushad Khan and Appa Chavan. He also tendered the panchanama dated 2nd June 2018 regarding arrest of accused. Learned counsel for applicant,

however, submitted that the said panchanama did not mention that applicant was found in possession of mobile phone. The sim card is not in name of applicant. To counter this submission learned counsel for respondent relied upon statement of Appa Chavan.

5. On perusal of the documents on record it is apparent that the case of prosecution is that the truck was loaded with copper wire which was to be delivered at decided location. The truck was fitted with GPS system. It was noticed that the truck is proceeding in a different direction. The truck was intercepted by Police attached to Chakan Police Station. The accused were found in the truck. They were apprehended. Their custody was taken by Silvassa Police Station where the offence was registered. When the truck was intercepted, Chakan Police Station had no knowledge that the driver is murdered. Even the complainant was not aware that driver is killed. However, since the truck was proceeding in a different direction it was apprehended that the truck is taken to different location with copper wire. However, it was revealed subsequently that the driver was killed. The accused showed place where the body was thrown. The driver was strangled. Prima facie there is evidence to show that the accused were found in truck when it was intercepted. CDR shows calls between the accused before commission of offence. During the period of offence mobile location continuously follows the path of truck travelling towards Nashik from Vapi. Presence of accused before and during travel of the truck establishes their involvement in theft and commission of murder. The documents collected during investigation prima facie shows involvement of applicant in the crime. The submissions advanced by learned advocate for applicant are not sufficient to disbelieve the

prosecution case or to grant bail to the applicant. The statements of witnesses, panchanama and other incriminating evidence establish involvement of applicant in the crime. The statement of Appa Chavan refers to the fact that the applicant had requested him to give his sim card for use and it was given to him for use. Thus, in the light of evidence, no case for grant of bail is made out.

6. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.3337 of 2018 is rejected and stands disposed of accordingly;
- (ii) Trial is expedited. The Trial Court shall make an endeavour to complete the trial within six months from the date of receipt of copy of this order;
- (iii) Registry to communicate this order to Trial Court.

(PRAKASH D. NAIK, J.)

MST