

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

CRIMINAL BAIL APPLICATION NO.1454 OF 2021

Dattatraya @ Nilesh Parshuram Salgar	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms. Tanvi G. Tapkire a/w Mr. Satyavrat Joshi for the Applicant

Mr. H. J. Dedhia, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 13th SEPTEMBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 256 of 2020 registered with the Vishrambag Police Station, Sangli, for the alleged offences punishable under Sections 302 r/w 34 of the Indian Penal Code.

3 Learned counsel for the applicant submits that the applicant has been falsely implicated in the said case. She submits that there is no material to connect the applicant with the alleged offence, inasmuch as, the

applicant has not been named in the FIR, nor is there any material with respect to last seen, recovery or motive *qua* the applicant. She submits that merely because the applicant had called the deceased on 10th and 11th November 2020, by itself, cannot be said to be incriminating, inasmuch as, the applicant and deceased were friends. She submits that even antecedents of the applicant cannot be considered while considering this application for bail, having regard to the fact that there is no material to connect the applicant with the alleged offence.

4 Learned A.P.P opposes the application. He however does not dispute the fact that apart from the CDR and the statement of one Sachin Pawar, a Patrolling Officer, there is no other material as against the applicant.

5 Perused the papers. The first informant-Sandip Raju Hankare is the brother of the deceased-Pradeep. According to the first informant, his brother-Pradeep used to consume alcohol and eat gutkha. He has stated that on 10th November 2020, at about 9:30 a.m, he had to Malgaon Road, Miraj for some plumbing work and that his brother-Pradeep had taken holiday and as such, was at home. He has further stated that at about 4:30 p.m, when he went home, he inquired about the whereabouts of Pradeep

and was told by his mother that he had gone out on the Aactiva motorcycle at about 11:30 a.m and had not returned home thereafter. At about 9:52 p.m, the first informant received a call on his mother's mobile from one Vaibhav Sakpal to ask whether his brother's name was Pradeep and if one white Aactiva motorcycle belonged to him. When the first informant replied in the affirmative, the said person disclosed that Pradeep was under the influence of alcohol and was unable to drive the vehicle and the complainant was asked to come near one Goga's Office near Bharatnagar. The informant was also told that one Sagar Babar and Azam Pathan were constantly calling Pradeep on his mobile. The complainant informed Vaibhav that his maternal aunt resides nearby and that he would ask her to go and pick up Pradeep. Thereafter, the complainant called her maternal aunt at 10:04 p.m and asked her to pick Pradeep from Bharatnagar. Later, the complainant received a call from her aunt-Kasturi, who told him that she was near Goga's office and that Pradeep (deceased) was not to be found there and that one boy had informed her that three persons had taken Pradeep with them to drop him home. When the complainant called Pradeep at 11:00 p.m, Pradeep told him that he was at Miraj market and would return home in about 10-20 minutes. Thereafter, the complainant, while waiting for his brother Pradeep, fell asleep at around 11:30 a.m.

6 According to the complainant, on 11th November 2020 at about 7:15 a.m, he received a call from his brother's mobile from Police Inspector-Ahire of Vishrambag Police Station, Sangli, who informed him that the body of his brother was found near the Kali Khaan. Pursuant thereto, the complainant along with his friend, reached the spot at about 8:15 a.m. and saw the body of Pradeep lying on the western side of the khaan. Pradeep had injuries on his face and head and blood-stained bricks and stones were lying around the said body. Accordingly, an FIR was lodged against unknown persons for causing the death of his brother-Pradeep with stone and bricks on his face, hand and body, for unknown reasons.

7 As far as the applicant is concerned, it is not in dispute that the applicant and the deceased were friends. There is no motive alleged as against the applicant, nor is there any material of last seen or recovery against the applicant. The prosecution has placed reliance on the CDRs i.e. the calls made between the applicant and the deceased on 10th and 11th November 2020 i.e. on 10th November deceased called the applicant 5 times and the applicant called the deceased twice; and on 11th November 2020, between 12:06 and 12:37 p.m, the applicant called the deceased once and the deceased called the applicant thrice. The location of the deceased

was at Sangli and the applicant at Miraj, when the said calls were made.

8 Since the applicant and deceased were friends, *prime facie*, the said calls cannot be said to be incriminating. As far as the statement of Sachin Pawar, the Patrolling Officer is concerned, his statement was recorded on 14th November 2020, wherein he has stated that he had seen that an auto-rickshaw had toppled at about 1:15 a.m and that there were two persons in the said rickshaw i.e. the applicant and another co-accused. Sachin Pawar in his statement has further stated that the said persons seem to be in an intoxicated state. The statement of Sachin Pawar was recorded on 14th November 2020. The said statement also cannot be said to be *prima facie* incriminating.

9 Considering the aforesaid material, mere antecedents of the applicant would not be a criteria for denying the bail to the applicant, having regard to the evidence as stated aforesaid.

10 Accordingly, the applicant deserves to be enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 40,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of the trial;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

11 The application is allowed in the aforesaid terms and is accordingly disposed of.

12 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.