

(This is a corrected copy of the order as per Speaking to Minutes order dated 4th September, 2021).

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

BAIL APPLICATION NO.507 OF 2020

Toyaj @ Rohit Rampyare Singh ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Shivkumar Mishra, for the Applicant.

Mr. J.P. Yagnik, APP for the Respondent-State

RESERVED ON : 21st AUGUST, 2021

PRONOUNCED ON : 27th AUGUST, 2021

CORAM : N. J. JAMADAR, J.

ORDER

1. This application is preferred to enlarge the applicant on bail in C.R. No. 230 of 2018 registered with Tulinj police station, Palghar for the offences punishable under sections 302, 364, 365, 201, 120B read with 34 of Indian Penal Code, 1860 (the Penal Code). The applicant was arrested on 14th March, 2018.

2. The indictment against the applicant is that he and his brother Pankaj Singh deal in the business of garments. In the year 2013-2014 they had purchased readymade garments, worth rupees eight lakhs from Narendra Mishra (the deceased), the

husband of the First Informant, on credit. They did not pay price of the goods despite repeated persuasion by the deceased. As the deceased was aggressively pursuing the payment of the price of the goods, the applicant and the co-accused, in pursuance of the conspiracy to eliminate the deceased, called the latter near Dwarka Hotel, Nalasopara (E) on the pretext of paying part of the unpaid price and kidnapped the deceased in the car bearing No. MH-84-AC-2573. The deceased was assaulted in the car and, eventually, the deceased was done to death at a secluded place near village Mohdul, Tal. Bhiwandi. The deceased was relieved of the ornaments and valuables. With a view to obscure the identity of the deceased and destroy the evidence, the accused smashed the face and head of the deceased by heavy stones.

3. I have heard Mr. Shivkumar Mishra, the learned counsel for the applicant and Mr. J.P. Yagnik, learned APP for the State.

4. Mr. Mishra submitted that all the co-accused, who are similarly circumstanced, have been enlarged on bail by this Court by order dated 7th December, 2018 in Bail Application No. 2137 of 2018 (Raj Jadhav vs. State of Maharashtra); order dated 24th April,

2019 in Bail Application No. 3136 of 2018 (Pankaj R. Singh vs. State of Maharashtra); order dated 11th June, 2019 in Bail Application No. 1010 of 2019 (Rakesh Singh vs. State of Maharashtra) and order dated 19th September, 2019 in Bail Application No. 3135 of 2018 (Rajeshkumar Roy vs. State of Maharashtra). Thus on the ground of parity, the applicant is entitled to be released on bail.

5. Even on merits, according to Mr. Mishra, the applicant deserves to be released on bail as the case essentially rests on circumstantial evidence and there are no circumstances which prima facie indicate the complicity of the applicant. Inviting the attention of the Court to the statements of witnesses namely Bandri Guraj and Sudhiraj Chauhan on which the prosecution places reliance, Mr. Mishra, learned counsel for the applicant, would urge that those statements do not squarely incriminate the applicant. In any event, the recovery of the pendant at the instance of the applicant and the fact that Sudhiraj Chauhan, a soda-water vendor, had allegedly seen the applicant and the deceased in the car are inherently of weak nature.

6. Mr. Yagnik, learned APP, on the other hand, would urge that the role attributed to the applicant is different and distinct from the co-accused, who have been ordered to be released on bail. The applicant is in fact the principal offender. The applicant had a clear motive to eliminate the deceased. There is material to show that the applicant had purchased garments on credit from the deceased and thus had a strong motive to eliminate the deceased since the applicant did not wish to pay the price of the said garments. The recovery of the pendant, belonging to the deceased, at the instance of the applicant from the jeweler, according to Mr. Yagnik, is a strong circumstance, which squarely incriminates the applicant.

7. I have given careful consideration to the submissions canvassed across the bar. I find force in the submission on behalf of the applicant that the identification by Sudhiraj Chauhan, a street vendor, warrants critical consideration. At this stage, the said circumstance on the strength of which the prosecution professes to establish the identity of the applicant does not commend implicit reliance.

8. Indisputably, the entire case rests on circumstantial evidence. The evidence of recovery of pendant of the deceased and identification by persons who were prima facie strangers to the accused, are matters which were pressed into service against the co-accused. Other co-accused, who were released on bail, appear to sail in the same boat. The co-accused Rakesh Singh at whose instance wrist watch of the deceased was allegedly recovered, was ordered to be released on bail by order dated 11th June, 2019 (Bail Application No. 1010 of 2019). Pankaj Singh (accused No. 4) and the brother of the applicant, who was also a party to the transaction with the deceased, like the applicant, was also released on bail by order dated 24th April, 2019 (Bail Application No. 3136 of 2018).

9. The situation which thus obtains is that the co-accused to whom the identical roles have been attributed and against whom similar material was pressed into service, have been ordered to be released on bail. Thus in the totality of the circumstances, I am persuaded to exercise the discretion in favour of the applicant. Hence, the following order.

ORDER

- (i) The Bail Application stands allowed.
- (ii) The applicant Toyaj @ Rohit Rampyare Singh be released on bail, on executing a PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (iii) The applicant shall report at Tulinj Police Station, Palghar on the first Monday of every month between 10:00 a. m. and 12:00 noon for a period of six months from the date of his release;
- (iv) The applicant shall attend the proceeding in Sessions Case No. 89 of 2018 regularly.
- (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 inform his latest place of residence and mobile 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;
- (vii) The applicant to cooperate with the conduct of the trial;
- (viii) The applicant to file an undertaking with regard to Clauses (iii) to (vii), in the trial Court, within two weeks of his release;

(ix) If there is a breach of any of the aforesaid conditions or there are two consecutive defaults in attending the trial Court, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)