

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1869 OF 2021

KISAN BHIMA DHANDRE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Pooja Agarwal i/b. Mr.Prakash Chavan a/w. Mr.Vaibhav Kulkarni, Advocate for the Applicant.

Mr.Ameet Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 21st OCTOBER 2021
PRONOUNCED ON : 26th OCTOBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.177 of 2016 registered with Police Station Khed, for offences punishable under Section 396, 302, 201 of the Indian Penal Code (IPC).

2 It is the case of the prosecution that on 27th July 2016 the informant's nephew namely Arun @ Mangesh Tabaji Chabukswar (since deceased) had taken Scorpio bearing Registration No.MH-12-MF-0404 on rental basis at the request of accused Deepak Dyandev Kasavi and Santosh @ Bapu Ramdas Jadhav. It is alleged that these accused robbed the deceased of Rs.1600/- and a mobile worth Rs.2000/-, in all Rs.3600/- and after killing the deceased threw his body in the bushes in order to cause evidence disappear. Accordingly, First Information Report (FIR) came to be lodged against these two accused persons.

3 However, it further appears that on 18th October 2016 informant's supplementary statement came to be recorded wherein he revealed the names of Kisan Bhima Dhandre (present applicant), Samir Mohd. Rafique Inamdar, Ramdas Maruti Salunke and Ganesh Bhagwan Rajguru.

4 Ms.Pooja Agarwal, learned counsel for the applicant, at the very outset, submits that the whole case of prosecution is based

on circumstantial evidence. Except the alleged Discovery statement recorded under Section 27 of the Evidence Act, there is no direct evidence to connect the present applicant-accused to the alleged offence. Other co-accused are on bail and the fact that the charge-sheet has already been filed, the present applicant-accused deserves to be released on bail, argued learned counsel.

5 Mr.Ameet Palkar, learned APP, on the other hand, fairly submits that the present applicant-accused came to be roped in on the basis of Discovery statement recorded under Section 27 of the Evidence Act and then submitted that appropriate order may be passed.

6 I have perused the investigation papers including the statement of prosecution witnesses recorded during the course of investigation. I agree with submission of the learned counsel for the applicant-accused that the present case is based on circumstantial evidence. There is absolutely no prima facie

evidence to show that the present applicant-accused either was seen in the company of the deceased immediately before the incident or that he, in any manner, acted on the instructions of the main accused, namely, Deepak Dyandev Kasavi and Santosh @ Bapu Ramdas Jadhav. The only statement of prosecution witness, namely, Bharat Rajendra Gaikwad shows that he had seen the accused namely Deepak Dyandev Kasavi and Santosh @ Bapu Ramdas Jadhav talking with the deceased while taking the latter's vehicle on rental basis. His statement nowhere shows involvement of the present applicant.

7 I also agree with the submission of the learned counsel for the applicant-accused and as also the learned APP that pursuant to the Disclosure statement allegedly given by the applicant-accused under Section 27 of the Evidence Act, sattoor and koyta with blood stained clothes came to be seized at his instance. At this stage, when no other direct evidence is forthcoming, in my considered opinion, this circumstance in the form of Disclosure statement is not sufficient to allow the

applicant-accused to remain behind the bars. Needless to say, the application deserves consideration. I am, therefore, inclined to allow the present application. Hence the following order :

ORDER

- (i) Applicant – Kisan Bhima Dhandre shall be released on bail in C.R.No.177 of 2016 registered with Police Station Khed, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the concerned Police Station on the first Monday of every month, till the Charge is framed.

(iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(v) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)

ARTI VILAS
KHATATE

Digitally signed by
ARTI VILAS
KHATATE
Date: 2021.10.26
13:39:00 +0530