

Samadhan Bibhishan Bhogal	...Applicant
Versus	
The State of Maharashtra	...Respondent

CORAM : REVATI MOHITE DERE, J.
DATE : 6th SEPTEMBER, 2021

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 547 of 2019 registered with the Vakad Police Station, Pune, for the alleged offences punishable under Sections 302, 363 read with 34 of the Indian Penal Code.
3. Learned Counsel for the applicant submits that the prosecution

case rests on circumstantial evidence and there is no material to connect the applicant with the alleged offence. He further submits that even the statement of witnesses with respect to last seen shows, that the applicant has not been identified by two, out of three witnesses. He submits that a perusal of the statement of Ramnath Shinde will show that an extra judicial confession was made by accused No.1 - Datta Birangal to the said witness, that he had killed the deceased – Tejas. He submits that even the said accused Ramnath has not named the applicant, nor any identification parade has been held. According to the learned Counsel, investigation is complete and chargesheet is filed and that the applicant has no antecedents.

4. Learned APP opposes the application. He, however, does not dispute the fact, that the applicant has no antecedents.

5. Perused the papers. According to the prosecution, on 20th April, 2020, the deceased – Tejas Bhise had informed his family members that he was going to Jamkhed with Datta Birangal (original accused No.1) and others, to collect money. As Tejas (deceased) did not return home, his family members lodged a missing complaint with the Police on 22nd April, 2020. The family members of Tejas tried to contact him on phone, however, his mobile was not reachable. Similarly, the mobile number of

Datta Birangal (original accused No.1) was also not reachable. In the said missing complaint, i.e. missing complaint No.82 of 2019, it was stated that there was some financial transaction between Tejas and Datta Birangal and that the relations between them were strained. During the course of investigation, it was revealed that deceased – Tejas was abducted by Datta Birangal and others on account of financial transaction between the deceased – Tejas and Datta Birangal. Investigation further revealed that the accused No.1 and others had murdered Tejas and had thrown his body near the Highway at Jamkhed at Satoda Ghat. Accordingly, on 30th April, 2019, C.R.No.547 of 2019 was registered as against Datta Birangal and others for the alleged offences punishable under Section 363 read with 34 of the Indian Penal Code. On 5th May, 2019, accused No.1 – Datta Birangal and the applicant were arrested. The dead body of the deceased - Tejas was recovered at the instance of accused No.1- Datta Birangal on 7th May, 2019. Subsequently, Sections 364, 302, 201 of the Indian Penal Code came to be added.

6. As far as the applicant is concerned, admittedly, there was no motive for the applicant to cause the death of deceased - Tejas. It is the prosecution case, that the applicant was an associate of accused No.1 - Datta Birangal and had accompanied him, when the incident took place.

According to the prosecution, the evidence as against the applicant is that of last seen with the deceased – Tejas. In support thereof, the prosecution relies on the statements of Shabbir Shaikh, Navnath Kale and Sanjay Saundekar.

7. As far as the statement of Shabbir Shaikh is concerned, he has stated that on 20th April, 2019 at about 7.30 p.m., three persons came in Honda City Car to his garage at Shivneri Chowk, Ahmednagar. He has stated that the Police came with one person – Datta Birangal and showed him the said person and two photographs. He has stated that the Police informed him that the two persons in the photograph were Tejas (Deceased) and Samadhan (applicant), an associate of Datta Birangal. The Police further disclosed that Datta Birangal and the applicant had murdered Tejas. Pursuant thereto, Shabbir disclosed to the Police that on 20th April, 2019, the said three persons had come to the garage, as the car had to be repaired; and that after the car was repaired, Datta Birangal made cash payment of Rs.1950/- for the same. The said witness – Shabbir's statement was recorded on 13th May, 2019. The statement of Sanjay Soundekar shows that on 20th April, 2019, three persons had come in the Honda City car at about 5.30 p.m. to his Petrol Pump at Shikrapur. He has stated that the Police came with two accused to his Petrol Pump and with one photograph

of Tejas (deceased). He had stated that after filling petrol in the vehicle, the said three persons left. There is no mention in the said statement dated 13th May, 2019 as to who were the two accused. Admittedly, the applicant was not put up for identification and hence the question of identifying the applicant does not arise.

8. As far as the statement of Ramnath Shinde dated 9th May, 2019 is concerned, his statement shows that Datta Birangal had called him on 20th April, 2019 at 8.00 p.m., pursuant to which, he met Datta Birangal. He has stated that there were two more persons present with him. He has stated that Datta Birangal disclosed to him that he had committed a mistake and that he had killed one person and the dead body had to be thrown. There is nothing in the said statement i.e. of Ramnath Shinde to show that the applicant was the person who had accompanied Datta Birangal. The extra judicial confession made by Datta Birangal to this witness, prima facie, shows only his involvement i.e. involvement of Datta Birangal. Admittedly, no identification parade has been held, so as to enable the said witness to identify the applicant. The recovery of the dead body is at the instance of accused No.1 – Datta Birangal. The applicant has no antecedents and that he is in custody since 5th May, 2019. Investigation is complete and chrgesheet is filed.

9. Considering the aforesaid, in particular, the evidence as against the applicant, the application deserves to be allowed. Accordingly, the applicant is 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. 20,000/- with one or two 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 conclusion of the trial;

(iii) The applicant shall inform his latest place of residence and mobile contact number, if any, soon after being released on bail and/or if there is any change of residence or mobile details, time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(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 are two consecutive defaults either in attending the Police Station or if the applicant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

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

11. 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.

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

REVATI MOHITE DERE, J.