

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

CRIMINAL BAIL APPLICATION NO.2076 OF 2021

1. Changunabai Ganpat Mengal	
2. Vilas Pratham Gavanda	...Applicants
Versus	
The State of Maharashtra	...Respondent

Mr. Rameshwar N. Gite for the Applicants

Mr. A. A. Palkar, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

MONDAY, 11th OCTOBER 2021

P.C. :

1 At the outset, learned counsel for the applicants seeks leave to amend to correct the name of the applicant No.2. Leave granted. Amendment be carried out forthwith.

2 Heard learned counsel for the parties.

3 By this application, the applicants seek their enlargement on bail in connection with C.R. No. I-77/2020 registered with the Ghoti Police

Station, Igatpuri, Nashik, for the alleged offences punishable under Sections 302, 506, 201, 120B r/w 34 of the Indian Penal Code.

4 Learned counsel for the applicants seek bail on the ground of parity. He submits that the similarly placed co-accused-Kailas Jethu Phasale has been released on bail by this Court (Coram : Sarang V. Kotwal, J.) vide order dated 23rd March 2021. He submits that the prosecution story is developed only on the basis of the statement made by co-accused under Section 27 of the Evidence Act, which is inadmissible.

5 Learned A.P.P does not dispute the same. However, he states that the applicants had motive, inasmuch as, applicant No.1's daughter was having an affair with the deceased and that as her daughter was to get married on 7th June 2020, she hatched a conspiracy alongwith other co-accused to eliminate the deceased.

6 Perused the papers. According to the prosecutrix, the applicant No.1's daughter was to get married with Kailas Phasale (accused No. 4). It is further alleged by the prosecution that the applicant No.1's daughter was

having an affair with Pandit Khadke (deceased) and that the said relationship was not acceptable to the applicant No.1-Changunabai and applicant No.2-Vilas Gavanda (son of applicant No.1 from her first marriage) and hence, they conspired with the co-accused to commit murder of Pandit Khadke. It is further alleged that on 26th May 2020, accused No. 2-Vilas Gavanda and accused No.3-Raju Thombare brought the deceased to a secluded spot in the jungle, gave him liquor and thereafter, accused No. 2-Vilas Gavanda, accused No.3-Raju Thombare and accused No.5-Prakash Jhugre committed his murder by throttling him and thereafter, threw his body in the forest.

7 Initially, a missing complaint was lodged, however, subsequently, when the dead body was discovered, an FIR was lodged on 13th June 2020. The body was in a highly decomposed state. As far as the applicants are concerned, apart from the alleged motive, there is no material, *prima facie* to connect the applicants with the alleged offence. According to the prosecution, the applicants had conspired with the other co-accused to kill the deceased, pursuant to which, accused Nos. 2, 3 and 5 committed murder, by throttling the deceased.

8 The prosecution case rests on circumstantial evidence. The

post-mortem report does not show the cause of death, as the dead body was found in a highly decomposed condition. The applicants are in custody since 14th June 2020. Investigation is complete and charge-sheet is filed.

9 Considering the nature of evidence *qua* the applicants, the application is allowed and the applicants are enlarged on bail, on the following terms and conditions :

ORDER

- (i) The applicants be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/- each, with one or two sureties in the like amount;
- (ii) The applicants shall inform their latest place of residence and mobile contact numbers 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;
- (iii) The applicants to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

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

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

(vi) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicants' 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.