

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

CRIMINAL BAIL APPLICATION NO. 1085 OF 2020

Avadhoot Shankar Kalekar

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Shriram Choudhari, for the Applicant.

Smt. J.S. Lohokare, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 19th JANUARY, 2021**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 183 of 2018, registered at Sawantwadi Police Station, District Sindhudurga, under Sections 302, 396, 201, 120-B, 411 and 404 of the Indian Penal Code.

2. The investigation is completed and the charge-sheet is filed on 16th January 2019. The applicant was arrested on 25th October 2018 and since then he is in custody.

3. Heard Mr. Shriram S. Choudhary, the learned Counsel for the applicant and Smt. J.S. Lohokare, the learned APP for the State.

4. The FIR was lodged by one Abdul Rauif Mulla. He was owner of the truck bearing Registration No. KA-22 B-8526. The FIR mentioned that his truck had left sugar factory at Hupari. On 13/10/2018, one Rajnikant Mane was cleaner of this truck on that day. The driver was not available and Rajnikat drove the truck from the factory at Hupari towards Kerala. Against the informant's advise, Rajnikant started with the truck from the factory. He was in touch with the informant till about 6.30 p.m. There was 25 metric tones of sugar in the truck. Informant again tried to contact Rajnikant between 8.30 to 9.00 p.m. but he did not pick up the phone. On the next date, i.e. on 16/10/2018, also informant could not contact Rajnikant.

5. On 17/10/2018 informant received a phone call

from Police Station at Amboli. He was called at Amboli Police Station. The informant saw that his truck was empty. There was no sugar in the truck. In the cabin there was dead body of Rajnikant. On this basis the FIR was lodged. Investigation was carried out. Applicant was arrested on 25/10/2018.

6. The prosecution story is that, about seven accused conspired to commit dacoity and murder. After the truck had left the sugar factory, two of the accused took entry in that truck by requesting the deceased. After some time, two more accused joined them. It is alleged that the applicant and one more accused followed the truck till Nipani. At some distance, the truck driver Rajnikant was given liquor. He was under influence of liquor and therefore went to sleep. In the night time, two of the accused strangled him. One of them gave a blow with heavy iron rod and committed his murder. Truck was taken to Belgaon and was unloaded in a grocery shop. The allegations against the present

applicant are that he joined the accused at some distance and he drove the truck till Belgaon. There are no allegation that the applicant took active part in committing murder.

7. The learned Counsel for the applicant submitted that there was only one statement in the entire charge-sheet and that was of one Lakhan Kamble . Even his statement is not incriminating against the applicant.

8. The learned APP submitted that the offence is serious and Lakhan Kamble's statement is sufficient to show applicant's complicity in the offence.

9. I have considered all these submissions. In the entire charge-sheet, the only circumstances against the present applicant is the statement of Lakhan @ Pramod Kamble recorded on 29/10/2018. This statement was recorded after the applicant's arrest. He has stated in this statement that he was staying in the same village as

that of present applicant. The applicant was a driver and used to take up small jobs of driving some vehicles. The applicant and this witness used to go for work on brick kiln of Vaibhav Korvi, who is one of the main accused in this case. On 15/10/2018, at about 7.00 p.m. the Applicant met this witness and told him that they were to go to Taundi Ghat. He told him that one vehicle was intercepted by police, there was cattle in the vehicle. Accordingly this witness and applicant went towards that place. They saw a truck bearing Registration number of Karnataka parked in front of a dhaba. The applicant went near the truck and had a conversation with the driver in that truck. He came back to this witness and told him that the truck was to be taken to Belgaon Police Station. He asked this witness to follow the truck. The applicant himself started driving the truck. They went upto Belgaon. The truck was parked in front of a shop at about 10 to 10.30 p.m. Then he joined this witness on his two wheeler and then he came back to their village Kasba Sagaon.

10. This statement clearly shows that the applicant has strictly acted as a driver. He had driven the truck from a dhaba near Taundi ghat upto Belgaon. Immediately after reaching Belgaon, he had joined this witness and both came back to their village. Prosecution story is that the truck was parked in front of a shop. It was unloaded there. This does not show that the applicant was instrumental in planning or executing dacoity with murder. The applicant was not with the other accused right from beginning till the end. His services were utilized by the other accused so that the truck could be driven from Taundi ghat to Belgaon.

11. At this stage, evidence against the present applicant is weak. Evidence against the present applicant is only the statement of Lakhan Kamble. Even that statement does not strongly point to the active involvement of the applicant or it does not show knowledge of the applicant regarding commission of the offence. Of course, the applicant had represented to this

witness that there was cattle in the truck which was not true but that also does not show that he was aware of the murder or dacoity. Lakhan Kamble's statement is recorded after Applicant's arrest. The Applicant is already in custody since 25/10/2018 i.e. for more than 2 years. The trial has not yet began. His further custody for the purpose of investigation is not necessary. However, considering the seriousness of the entire incident, certain conditions will have to be imposed on the applicant. Hence the following order.

ORDER

- (i) In connection with C.R. No.183 of 2018 registered with Sawantwadi Police Station, District Sindhudurga the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned Police Station every

fortnight between 1.00 p.m. to 2.00 p.m. till conclusion of the trial.

- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)