

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

CRIMINAL BAIL APPLICATION NO. 1177 OF 2020

1. Ashutosh Pramod Patil
2. Akshay Ratnakar Patil ... Applicants

Versus

The State of Maharashtra ... Respondent

.....

Mr. S. V. Marwadi i/b N. M. Nadar, Advocate for the Applicants.
Mr. A. R. Kapadnis, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 15th JANUARY, 2021.

PER COURT:

1. Applicants are seeking enlargement on bail in Crime No.124 of 2019 registered with Palghar Police Station for the offences punishable under Sections 302,364, 365, 120B, 201 and 34 of the Indian Penal Code,1860 ('IPC' for short). On 9th May, 2019 subject offences were registered against the unknown persons by one Ajay Raju Mhaske, who was working as supervisor in company known as Alfa Metal. Arif Ali (Deceased) was owner of said company. Ajay Mhaske had reported that Bhagesh Dalvi worker in the Alfa Metal, told him that on 9th May, 2019 he along with Nitin Dongre, Yogesh Giri and Manoj Patil were proceeding for lunch and

at that time three unknown persons got down from Scorpio and took Arif Ali in white coloured Scorpio while he was travelling in a rickshaw. Some one had stopped pick up vehicle on the road and auto rickshaw was behind pick up and Scorpio was behind auto rickshaw. Upon receiving this information, Ajay Mhaske tried to search Arif Ali and finally found the auto-rickshaw in which he was travelling when the alleged kidnapping occurred. Ashok Mali, rickshaw driver also confirmed the fact of the alleged kidnapping. Supplementary statement of complainant was recorded on 12th May, 2019 and 15th July, 2019. He attributed motive for murder of Arif to co-accused. He also stated that on 9th May, 2019 at 1.30 p.m. he was proceeding to his house for lunch on motorcycle. He saw Scorpio Jeep of Prashant Sankhe coming in reverse direction.

2. It is the prosecution's case that accused no.1- Prashant Sankhe was harbouring grudge against the deceased and conspired with co-accused to eliminate him. In furtherance of conspiracy, the deceased was abducted in white coloured Scorpio car and was strangled therein and, thereafter efforts were made to burn his body.

3. Learned advocate for the applicants submit that, there is no evidence against the applicants to show their involvement in the

crime. The co-accused Hareshwar Gajanan Kudu was granted bail by this Court vide order dated 24th February, 2020 passed in Bail Application No.364 of 2020. Applicants are entitled for parity. It is further submitted that, other accused Bala Chandrakant Shinvari, Akshay Pandurang Shinvari, Rohit Suresh Pamle were granted bail. Several other persons were also granted bail. It is submitted that only eye witness to the incident of abduct on Shri. Ashok Mali has not identified the applicants. Thus, there is no evidence to show that the applicants were present at the place where the victim was abducted.

4. Learned APP submitted that C.C.T.V. footage installed in Sai Palace Hotel shows the presence of the applicants while entering and exit along with other accused. The applicant No.1 is the person who had intercepted auto rickshaw on motorcycle. The tower location of the applicants shows the presence of the applicants right from inception since that the place where body of deceased were burnt. The applicant No.1 was present in meeting with the main accused Prashant Sankhe. He was party to conspiracy. This is revealed in the statement of Ismail Shaikh recorded under Sections 161 & 164 of Cr.P.C. The case of applicant cant be distinguished from accused who are admitted to bail.

5. The alleged incident had occurred on 9th May, 2019. The

FIR was lodged by one Ajay Mhaske. The case of the prosecution is that Prashant Sankhe had grudge against victim Aarif and hence he had hatched conspiracy. The deceased was travelling by auto rickshaw. The accused came in Scorpio vehicle. Arif was pulled from the auto rickshaw and taken in Scorpio. Thereafter, he was killed. Statement of auto rickshaw driver Ashok Mali was recorded on 10th May, 2019. He stated that he was driving auto rickshaw in which deceased was travelling from Palghar station to Kashipada. On the road one pick up had stopped. Rickshaw was stopped behind pick up. Scorpio Jeep followed them and stopped behind Rickshaw. 3 to 4 unknown persons got down. They pulled Arif from Rickshaw and took him in Scorpio and after reversing the vehicle they went towards Palghar. Motorcycle allegedly used for recce was recovered at the instance of applicant No.1 on 21st May, 2019. There is no evidence on record that applicant was involved in using the said motorcycle for that purpose. Statement of Ismail Shaikh was recorded on 11th June, 2019 under Section 161 & on 31st July, 2019 under Section 164 of Cr.PC. He stated that at the instance of his friend he had visited office of Prashant Sankhe on 7th May, 2019. Six other persons were present in office. Their names were Prashant Mahajan, Chunny Sankhe, Dilawar Singh, Omkar Patil, Ashutosh Patil (Applicant No.1) and Hareshwar Kudu. 10 to 12 other persons

came to office. 4 to 5 persons were asked to wait in the office and others were informed to wait outside. The persons present were informed that one person will be picked up by Scorpio vehicle. They should just stand at the place. They were shown the spot. Statements of Sizin Gopinathan were recorded on 11th June, 2019 and 31st July, 2019 under Sections 161 & 164 of Cr.PC. According to him on 7th May, 2019 he went to office of Prashant Sankhe with Ismail and Anil. Six other persons were present at office. Their names were Prashant Mahajan, Chunny Sankhe, Dilawar Singh, Omkar Patil, Ashutosh Patil and Hareshwar Kudu. 10 to 12 other persons came there. 4 to 5 persons were asked to wait inside and others were sent out. They were informed about plan of abduction. Spot was shown to them. It is pertinent to note that Ismail and Sizin did not participate in the incident of abduction. They were not aware who had actually participated in the incident dated 9th May, 2019. According to them when the plan of abduction of victim was disclosed by Prashant Sankhe some persons were made to wait inside and others were asked to wait outside. They have not stated whether applicant No.1 was made to wait inside when the plan was explained to inmates of office. Statement of Yogesh Giri was recorded under Section 164 of Cr.PC. on 1st July, 2019. He has stated that 4 persons got down from Scorpio and dragged Arif from Auto rickshaw and took him away in

Scorpio vehicle. There is no identification that applicant is one of the person who abducted Arif. Rickshaw driver Akash Mali has not identified applicants. Panchanama dated 17th May, 2019 refers to seizure of pen drive relating to C.C.T.V. footage from Sai Palace hotel. It was viewed. One Dhruv Shetty identified persons seen in footage as Shivaji Thakur, Omkar Ashutosh Patil and Akshay Patil. Camera No.1 footage shows that Shivaji Thakur was going out of entrance. At 3.31 p.m. he is seen carrying can. At 3.32 p.m. Hareshwar Kudu is seen coming on motorcycle from Palghar side and proceeding towards Boisar with Shivaji Thakur. At 3.48 p.m. Ashutosh Patil (applicant No.1) and Omkar coming from Palghar side on motorcycle and entering hotel. Than applicant No.1 is seen coming at entrance and again returning to hotel at 3.55 p.m. Akshay Patil (applicant No.2) came on motorcycle from Palghar side and enters hotel. At 4.38 p.m. Ashutosh Patil, Omkar, Akshay Patil were seen going out. Thereafter, Ashutosh and Omkar were seen going on motorcycle towards Palghar Umroli. Than Akshay Patil left on motorcycle towards Palghar Umroli. In camera No.3 Shivaji Thakur is seen near counter making payment. Ashutosh Patil, Omkar and Akshay Patil left out after making payment on counter. Camera No.5 refers to Shivaji Thakur sitting on Table at 3.14 p.m. He left hotel at 4.37 p.m. Ashutosh, Omkar and Akshay were seen going out. Panchanama

recorded on 17th May, 2017. It does not mention the date of recording. The footage cannot be held to be strong circumstances to show involvement of applicants in crime. Learned APP had submitted that tower location of cell phone of applicants shown their movements right from inception till the place of burning body of victim. In any case only on such evidence involvement of applicants cannot be inferred. In the order rejecting application for bail, it has been observed that prosecution has relied on CDR which shows that both applicants are in constant touch with each other and other accused. In the absence of evidence showing their involvement bail cannot be refused on such circumstances.

6. This Court granted bail to Bala Shivnari, Akshay Shivnari and Rohit Pamale by order dated 4th December, 2019 passed in Bail Application No. 2844 of 2019. While granting bail it was observed that the said accused were residents of Village Tembude which is in vicinity of Kashipada, Juna Sathpatti Road. Except C.D.R. and corresponding tower location, no other incriminating material has been brought on record. Accused No.7 Sushant Palav was granted bail by Sessions Court, Palghar. Hareshwar Kudu, who was present in office of Prashant Sankhe and seen in C.C.T.V. footage has been granted bail this Court by order dated 24th February, 2019

passed in Bail Application No.364 of 2020. While granting bail it was observed that, presence of the said applicant is shown in meeting by accused No.1 wherein conspiracy was hatched to eliminate Arif. Some of the persons were asked to go out of room. Prosecution has not clarified who were asked to go out of meeting room and whether the accused was present in meeting and shared intention for commission of offence. C.D.R. is not sufficient to continue custody. The case of applicant is similar. Smr. Smita Shetty was granted bail by Sessions Court.

7. Learned APP submitted that one more case is registered against the applicants for offence under Section 302 of Indian Penal Code in which the applicants are on bail. However, taking into consideration the nature of evidence against the applicants, case for grant of bail is made out. Hence, I pass following order.

ORDER

- (i) Bail Application No.1177 of 2020 is allowed;
- (ii) The applicants are directed to be released on bail in connection with Crime No.124 of 2019 registered with Palghar Police Station on executing PR. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall report concerned Police Station

on the second and fourth Monday of each month between 11:00 a.m. to 1:00 noon till further order;

(iv) The applicants shall inform their latest place of residence and contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer of the concerned Police Station;

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

(vi) Bail Application stands disposed of accordingly.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)