

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

CRIMINAL BAIL APPLICATION NO. 1255 OF 2020

Ashutosh Vilas Baachav
Applicant

....

Versus
The State of Maharashtra

.... Respondent

Mr. S.B. Bhatagunaki, for the applicant.
Smt. J.S. Lohokare, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 18th FEBRUARY 2021**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 193 of 2020 registered with Satana Police Station, Nashik, under section 302 of the Indian Penal Code. Subsequently, section 120B of IPC is also added.

2. Heard Mr. S.B. Bhatagunaki, learned Counsel for the applicant and Smt. J.S. Lohokare, learned APP for

the State.

2. The FIR was lodged by one Ishwar Dinkar Sardar. He has stated in his FIR that when he woke up in the morning on 14/5/2020, he was told by his wife that his brother Rajendra had not returned home throughout the night. Therefore, he started making inquiry. He came to know from his relative that police officers of Satana Police Station had found Rajendra in a ghat. He was dead. He had suffered injuries. The informant went there. He saw that the deceased was inside a car and there was a heavy iron weapon in the car. The deceased had suffered injuries on his head. On this basis the FIR is lodged.

3. The applicant was arrested on 19/5/2020 and since then he is in custody. The investigation is over and charge-sheet is filed.

4. The learned Counsel for the applicant submitted that even as per the prosecution case, the

offence is committed by one Ravindra. The prosecution story is that Ravindra and one Harshada were having affair. Harshada was friendly with the deceased. He had taken some photographs and he was blackmailing Harsadha on the basis of those photographs. He also had some video shooting of the accused Harshada. He was not deleting it and therefore, the accused Harshada and Ravindra decided to commit murder of Rajendra.

5. The prosecution case against the present applicant is that Harshada had approached the applicant for help and he had suggested that since deceased was not deleting the video shooting and photographs, he should be eliminated.

6. Learned Counsel for the applicant submitted that the in the entire charge-sheet there is hardly any material against the present applicant. There is no motive to commit murder of the deceased as far as the applicant is concerned.

7. Learned APP opposed this application. She submitted that there is statement of one Deepak which shows that the applicant also had a motive. She submitted that supplementary statement of the first informant makes reference to confession given by the main accused Harshada wherein the role of the present applicant is mentioned.

8. I have considered these submissions. Prosecution case itself shows that Harshada had called deceased to a particular spot. The other accused Ravindra had gone there and had committed murder of the deceased with a heavy iron weapon. It is nobody's case that the present applicant was present at the spot when the incident had occurred. The applicant is roped in, on the allegations of having conspired with the main accused.

9. With the assistance of learned Counsel for the

applicant, I have perused the charge-sheet and aforementioned statements referred to by the learned APP. Supplementary statement of the informant mentions confession given by the accused Harshada to the Police, in which there is some reference to the present applicant that he had suggested that the deceased should be eliminated. However, this part obviously is inadmissible. This statement was made by Harshada to the Police. It is hit by Section 25 of the Evidence Act. Therefore this statement cannot be admissible. Apart from that there is recorded conversation between the accused Nos. 1 and 2 i.e. Harshada and Ravindra. This conversation shows their relationship and the state of mind that both of them were in. Harshada was fed up of blackmailing by the deceased and she was strongly complaining about it to Ravindra. This itself shows strong motive as far as both of them are concerned. There is no reference to the present applicant in their entire conversation.

10. The statement of Deepak also does not take prosecution case any further. There is a reference of one complaint lodged by applicant's sister against cousin of the deceased. In that case, the deceased had helped his cousin to secure bail. This witness Deepak has stated that on 14/04/2019, applicant had gone to the house of the deceased. He had abused and threatened the deceased. This statement is also a very weak piece of evidence. The complaint given by the applicant's sister is too remote in the context of the case and it does not provide sufficient motive for the applicant to commit murder or conspire to commit murder of the deceased. This statement of Deepak is recorded on 9/6/2020, i.e. after the arrest of the present applicant. This further weakens genuineness of this version. Apart from these circumstances, there is hardly any material against the present applicant. Therefore his continuous detention in the custody during the entire period of trial is unwarranted. He, therefore, deserves to be released on bail.

11. Hence the following order.

ORDER

- (i) In connection with C.R. No.193 of 2020 registered with Satana Police Station, Nashik, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)