

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1923 OF 2019

Pranit Joma Bhoir @ Babu
Versus
State of Maharashtra

...Applicant

...Respondent

Mr. Rahul Thakur a/w Mr. Ganesh Gupta for the Applicant.

Mr. Umeshchandra Yadav-Patil, Spl.P.P a/w Mr. S.V.Gavand, APP for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 9th MARCH, 2021

P.C. :

1. Heard learned Counsel for the parties.

2 By this application, the applicant, aged 19 years, seeks his enlargement on bail in connection with C.R. No. 571 of 2018 registered with the Pant Nagar Police Station, Ghatkopar Mumbai, for the alleged offences punishable under Sections 302, 363, 364, 365, 394, 201, 120(b) r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the said case. He submits that the applicant aged 19 years, was working as an auto rickshaw driver at the relevant time. He submits that there is no material on record to show that the applicant was aware of the conspiracy hatched by accused No.1-Sachin Pawar and accused No.2-Dinesh Pawar alongwith others, to honey trap the deceased Rajeshwar Udani and thereafter, to murder him. He submits that the applicant was asked at the last minute to accompany accused No.4-Mahesh (his cousin brother). He submits that the applicant did not know either co-accused No.1-Sachin or co-accused No.2-Dinesh nor the other co-accused (except his cousin-Mahesh – accused No.4). He submits that the CDR records bear testimony of the said fact. He submits that the deceased was smothered with a cake on the rear seat by accused No.2-Dinesh, accused No.4-Mahesh and accused No.7-Nikhat Khan. He submits that the applicant was simply driving the car and that there is no material on record to show that the applicant had knowledge of the conspiracy hatched by the co-accused to honey trap the deceased and later to murder him. He submits that the applicant has no antecedents; and that the applicant is ready to abide by any conditions that may be imposed by this Court if released on bail.

4. Learned Spl.P.P. vehemently opposed the bail application. He relied on the flow chart dated 28/11/2018 to show the movement of the vehicles on the said day. He submitted that witness – Sohail Golandaz has stated that the applicant was driving the vehicle *i10*, in which accused No.7 was sitting on the rear seat and at one point, the deceased joined accused No.7 and sat on the rear seat of the said vehicle with accused No.7 – Nikhat Khan. He submits that Sohail is a star witness who was present all along. He submits that it was at the instance of accused No.2, that Sohail hired the services of accused No.5 i.e. the applicant and accused No.4 - Mahesh. He submits that Sohail was leading the said vehicle i.e. *i10* in which the deceased and accused No.7 were sitting till beyond Airoli Toll Naka, as the accused No.5 (applicant) was not familiar with the topography of the said place. According to the learned Spl.P.P., after the deceased was smothered with cake, his dead body was thrown near Dehrang Dam, Panvel, District Raigad, after which, the applicant got down from the vehicle *i10* at Vichumbe, Panvel and went to his residence after calling his cousin-Yogesh.

5. According to the learned Spl.P.P., there is ample material to show the complicity of the applicant in the alleged crime. He further submitted that this Court (**Coram : Sandeep K.Shinde, J**) vide order dated

20/01/2020 rejected the bail application of co-accused Nikhat Khan (accused No.7). Learned Spl.P.P., however, does not dispute the fact, that the applicant was not known to the main accused No.1-Sachin Pawar and also does not dispute the fact that there are no CDR records between the applicant on the one hand and the accused No.1 on the other. He submits that star witness - Sohail knew accused No.2 – Dinesh Pawar; and that the said witness was entrusted to bring accused Nos.3,4 and 5 (applicant) from Chembur to Vikhroli, where deceased was to be picked up. He submits that Sohail was asked by accused No.2 – Dinesh Pawar, to accompany applicant's vehicle *i10* as the applicant was not aware of the topography of Navi Mumbai and as such, Sohail was piloting the said vehicle i.e. *i10* upto Vikhroli Toll Naka. Sohail's statement shows that accused No.2 – Dinesh Pawar had disclosed to him that there was a birthday party and had asked him to bring a cake for his friends, pursuant to which, Sohail purchased a cake for accused No.2 – Dinesh Pawar. Learned Spl.P.P. does not dispute the fact, that the applicant has no antecedents.

6. Perused the papers. Accused No.1-Sachin Pawar was known to deceased-Rajeshwar Udani. Motive alleged is that Udani (deceased) was trying to get close to accused No.1 – Sachin Pawar's live-in partner. It appears, that accused No.1 – Sachin Pawar wanted to honey-trap Udani and

for that, wanted a young girl. It is alleged that accused No. 1 – Sachin with the help of accused No.2 – Dinesh roped in the accused Nos.6 and 7. It appears that deceased No.1 wanted to shoot video of Udani with accused No.7 – Nikhat Khan, which could have been used to black-mail him later. On 20/11/2018, Rajeshwar Udani's driver – Vijay Misal dropped Rajeshwar Udani near Vikhroli bridge on the Eastern Highway at about 8.00 p.m. As Rajeshwar Udani did not return, a missing complaint was lodged on 29/11/2018 by Raunak Udani – son of Rajeshwar Udani, with the Pant Nagar Police Station, Ghatkopar, Mumbai. On 03/12/2018, the Panvel Police found a dead body (Rajeshwar Udani) near Dehrang Dam, pursuant to which, an FIR was lodged by Raunak Udani alleging offences of kidnapping and murder as against unknown persons. The said FIR was lodged on the very same day i.e. on 03/12/2018. The driver of Rajeshwar Udani, Vijay Misal informed the complainant – Raunak, that he had dropped Rajeshwar Udani at the Ghatkopar depot; and that Rajeshwar Udani walked towards a white coloured car and sat in the said car, after which the car proceeded towards Vashi.

7. During the course of investigation, all the accused were arrested. Investigation revealed that the deceased – Rajeshwar Udani had an eye on accused No.1-Sachin Pawar's girlfriend and that the said accused

also owed some money to the deceased, pursuant to which, accused No.1 – Sachin Pawar alongwith other co-accused hatched a conspiracy to eliminate Rajeshwar Udani (deceased). It is the prosecution case, that prior to the implementation of their plan, accused Nos.1 (Sachin Pawar) and 2 (Dinesh Pawar) had carried out a recce of the place, at Navi Mumbai on 28/11/2018 (the same is supported by the CDR locations). It is alleged that after conducting a recce of the said place, the said accused Nos. 1-Sachin and 2-Dinesh came to Ghatkopar, Mumbai, where accused No.2-Dinesh contacted Sohail (prosecution witness). The same is supported by the CDR records. According to the prosecution, accused No. 2 Dinesh Pawar asked Sohail to purchase a cake from Neha Bakery as he wanted to celebrate the birthday of a friend alongwith his friends. Pursuant to the same, Sohail contacted accused No.4 – Mahesh and accused No.5 (applicant), on the instructions of accused No.2 – Dinesh. According to the prosecution, Sohail was asked to bring accused Nos.3,4 and 5 (applicant) from Chembur to Vikhroli where the deceased was to be picked up; that accused No.5 (applicant) was instructed to drive the car i.e. *i10* and Sohail was asked to do piloting of the said vehicle, as accused No.5 (applicant) was allegedly not aware of the topography of Navi Mumbai. Accordingly, Sohail alongwith his friend piloted the said vehicle on a two wheeler from Phirozshah flyover to Vikhroli to Airoli Toll Naka. It is also the

prosecution case, that accused Nos.2,3 and 4 hired an auto rickshaw from Standard Alkali Bus Stop, Rabale, Navi Mumbai and had gone towards Airoli Toll Naka, whereas, applicant was driving *i10* in which, accused No.7 Nikhat Khan was sitting on the rear seat. It is also the prosecution case, that accused No.1 – Sachin Pawar had got down from the *i10*, a few minutes prior to from where Rajeshwar Udani was picked up.

8. According to the prosecution, after deceased - Rajeshwar Udani sat in the *i10* on the rear seat alongwith Nikhat Khan (the applicant was driving the said vehicle), the said vehicle proceeded towards the over bridge i.e. near Standard Alkali Bus Stop at Rabale, Navi Mumbai, where the accused No.2 sat on the rear seat of the *i10* alongwith a cake which was purchased by Sohail. Accused No.4-Mahesh alongwith accused No.3 – Siddhesh also stepped into the car i.e. accused No.3 – Siddhesh on the front seat (next to driver's seat) and accused No.4 on the rear seat. It is the prosecution case that accused Nos.2, 4 and 7 tried to put the cake in Rajeshwar Udani's mouth, allegedly laced with sedatives and smothered him in the scuffle. The cause of death is stated to be "*Evidence of nasal bone fracture with fracture of hyoid bone suggestive of death due to asphyxia by smothering with manual strangulation (unnatural).*"

9. After the vehicle reached Dehrang Dam, the body was thrown near the said dam after which, the applicant got down at Nere Gaon, Panvel where he called his cousin and asked him to pick him up. Thereafter, accused No.2 – Dinesh Pawar alongwith accused No.7 – Nikhat Khan are stated to have gone to Murud, Alibaug. No motive is attributed to the applicant to kill the deceased. It appears from the prosecution case that at the behest of accused No.2 – Dinesh Pawar, Sohail had called accused Nos.3,4 and 5 (applicant). The applicant is the cousin brother of accused No.4-Mahesh. The applicant, at the relevant time, was aged 19 years and would drive an auto rickshaw. Prima facie, it appears that his services were hired for driving the *i10*. Having regard to the facts, prima facie, the possibility of the applicant not being aware of the conspiracy to kidnap and later kill the deceased cannot be ruled out. Whether or not the applicant was part of the conspiracy to kill Rajeshwar Udani, is a matter which will be decided by the Trial Court. The applicant has no antecedents. Whilst rejecting the application of co-accused Nikhat Khan, this Court has considered the messages exchanged between accused No.7 and other accused (not the applicant) and other material on record. The role of the applicant aged 19 years is distinguishable from that of the other accused.

10. Considering the aforesaid, the application is allowed and 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. 25,000/- 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 the conclusion of the trial;
- (iii) The applicant shall not leave the jurisdiction of Mumbai, Thane and Raigad without permission of the Trial Court;
- (iv) The applicant shall inform his latest place of residence and mobile contact number 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;
- (v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

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

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

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

12. 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.

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

REVATI MOHITE DERE, J.