

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1268 OF 2021
IN
CRIMINAL APPEAL NO. 18 OF 2021

RAMCHANDRA @ RAJU CHIMAJI SHETE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Rajendrraa Deshmukh, Senior Advocate i/by
Mr. Abhay D. Ostwal with Mr. Mohit Deoda
APP for Respondent/State : Mr. S. J. Salgare

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**CORAM : SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE : 14th JULY 2022.

Per Court :

Heard.

1. The Applicant was the Original Accused No.4 in Sessions Case No.411/2016 on the file of Additional Sessions Judge, Ahmednagar. Vide judgment and order dated 11.11.2020, he was convicted for commission of offence punishable under Section 302 read with 120-B of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- and in default of

payment of fine, to suffer further rigorous imprisonment of six months. He was convicted for offence punishable under Section 120-B of IPC and was sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs. 7000/- and in default to suffer further rigorous imprisonment for three months.

2. The prosecution case is that on 13.09.2016, the deceased Himmat Jadhav was travelling from Ahmednagar towards Aurangabad. Then he had reached at a place called as Pandharipul, he was shot at from behind because of which he suffered bullet injury and died. He had suffered nine injuries and there is no dispute he died of gun shot injury. The cause of death is mentioned as firearm injury. During trial, the prosecution examined 25 witnesses. Learned Senior Counsel for the Applicant submitted that the case is based on circumstantial evidence as far as present Applicant is concerned and there are absolutely no incriminating circumstances against him. The allegations at the highest are of hatching conspiracy but even there, there is no evidence brought on record. He submitted that the prosecution tried to rely on a panchanama under which, a mobile phone was recovered, which was

thrown away by the Applicant. However, nothing was recovered and therefore there is no connection with any mobile phone and the Applicant, which the prosecution wants to allege. According to the prosecution case, the Applicant was using phone of one Narayan Waghmode and that phone was used to keep in touch with the actual assailants and to hatch conspiracy. However, that Narayan Waghmode is not examined and therefore there is no evidence at all.

3. Learned APP opposed this application and he submitted that there are CDRs showing that the Applicant was using phone of Waghmode, which was transpired during the investigation as is deposed by the Investigating Officer. This phone was used for keeping in touch with the assailants at the time of incident and also for hatching the conspiracy. He therefore submitted that these are strong circumstances.

4. We have considered these submissions and we are unable to agree with the learned APP's submissions. The main evidence against the Applicant is that he had used mobile phone of Waghmode to keep in touch with the assailants, who had fired at the deceased. The

prosecution tried to bring on record a memorandum panchanama through which attempt was made to recover the said mobile. For that purpose, PW-8 - Sanjay Bhingardive was examined. He was a Pancha. He was stated that on 09.01.2018, he acted as Pancha. The Applicant had shown willingness to point out the place, where he had thrown the mobile handset in the stream. The police party went there. They tried to search the mobile handset, but nothing was found.

. Since nothing was found pursuant to the statement of the Applicant, that the statement is of no use for the prosecution and cannot be used as incriminating circumstance against the present Applicant.

5. PW-9 – Ganesh Agale was another Pancha. He stated that the Applicant allegedly shown the place where the conspiracy hatched. However showing such place does not take the prosecution case any further. Learned Judge in Paragraph No. 215, 216 and 217 has discussed, case against him. He has mentioned that mobile no. 7447282495 was belonging to Narayan Waghmode and it was used by the present Applicant.

6. Learned Judge has observed that the memorandum and discovery panchanama attributed to the present Applicant revealed that he was using mobile phone of Waghmode. This observation is not tenable in law because the portion of his statement is inadmissible. Phone was not recovered. Therefore this panchanama is innocuous. Learned Judge has relied on the inadmissible portion in that particular statement.

7. He has further relied on the evidence of PW-25 - Anand Bhoite (IO). According to this witness, during investigation, he has found that the Applicant was using the mobile phone of Narayan Waghode. The Investigating Officer did not have any personal knowledge about the fact of the Applicant using the phone of Narayan Waghmode. That particular person, Narayan Waghmode was not examined by the prosecution. There is no other evidence in the prosecution case to connect the Applicant with that particular telephone number and therefore CDR in respect of that telephone number is not incriminating as far as the present Applicant is concerned. Besides this, there is no circumstance against the Applicant. Learned APP also could not point

out any other circumstance against the present Applicant, besides what is discussed in the above discussion.

8. In this view of the matter, the Applicant has made out a case for his release on bail during the pendency of appeal. Hence the following order.

ORDER

- (i) During pendency and final disposal of the appeal, the Applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.50,000/-, with one or two sureties in the like amount.
- (ii) The Applicant shall report to the concerned police station once in a month for a period of one year from today.
- (iii) The Criminal Application is disposed of.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

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