

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1055 OF 2022

Rahul Bhikulal Kasat	..Applicant
Vs.	
The State of Maharashtra	..Respondent

Mr.Shirish Gupte, Senior Advocate along with Mr.Amey Deshpande, Ms.Vandana Bait and Ms.Rakhi V. Sundale i/b. Mr.A.R.Gaikwad, Advocates for applicant

Mr.V.S.Badakh, APP for respondent-State, assisted by Mr.R.A.Karwa, Advocate for informant/intervenor

**CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 20,2022
PRONOUNCED ON : SEPTEMBER 05, 2022**

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0120 of 2021 registered with Selu Police Station, Dist.Parbhani, for the offences punishable under Sections 302, 120-B, 201, 203, 427, 403, 465 and 471 of Indian Penal Code (I.P.C.).

2. Heard Mr.Shirish Gupte, learned Senior Counsel, appearing for the applicant and Mr.V.S.Badakh, learned APP for the respondent-State, assisted by Mr.R.A.Karwa, learned counsel for the informant/intervenor.

3. The First Information Report (F.I.R.) was, initially, registered for the offences punishable under Sections 304-A and 427 of I.P.C. The informant then gave a supplementary statement, alleging the applicant to have got the informant's brother murdered. It is said to be a case of contract killing. On investigation of the crime, charge-sheet has been filed against the applicant and the co-accused.

4. The case of the prosecution, in short, is that the applicant had extra-marital relationship with the widow of the deceased-Suresh. The applicant and the deceased were friends. The applicant's family relationship with the deceased is said to be a reason of intimacy between him and the widow of the deceased. The relationship between the two did not remain secret. It came to the knowledge of the deceased. He, therefore, ensured that his wife would no longer remain in contact with the applicant. She even discontinued making use of cell-phone. The applicant was said to be desperate to continue with the relationship. He would call on the cell-phone of the son of the deceased. So as to ensure to have smooth relationship with the wife of the deceased, the applicant gave a contract to kill the deceased and even got the murder executed.

5. Learned Senior Counsel for the applicant would submit that it was a case of death occurred in motor vehicle accident. The brother of the deceased himself reported the matter. The persons, who were employed by him for agricultural operations, claimed to have had witnessed the accident. The informant then changed his version to contend that it was so done only with a view to ensure that the widow and the child of the deceased would get some money under insurance claim. Learned Senior Counsel would further submit that the Dy. Superintendent of Police, Selu, had demanded bribe from the applicant, so as to ensure not to arrest him in the crime, since, by that time, the audio clip of the talks between the applicant and the widow of the deceased, had become viral. The talks indicate that the deceased was murdered and not died in accident. The applicant had, therefore, approached the Anti Corruption Bureau. The concerned Dy. Superintendent of Police was trapped accepting the bribe money. The demand was for Rs. One Crore. Since a police Officer of high rank came to be trapped at the instance of the applicant, the case that was reported as accidental death, came to be reopened only with a view to take revenge. Learned Senior Counsel would submit it to be a case based on circumstantial

evidence. The persons, on whose statements, the prosecution proposed to rely, are in the nature of evidence of accomplice. One accomplice cannot corroborate the another.

6. On the question of conversation between the applicant and the co-accused – Vinod Ambhure recorded by the co-accused himself and preserved in the memory card is concerned, learned Senior Counsel for the applicant would submit that it is not original conversation between the two. There is no certification under Section 65B of the Evidence Act in support thereof. The Investigating Officer himself has issued such certificate in support of the talks which has been preserved in the memory card. The memory card did not contain the original conversation. On the question of voice identification of the applicant and the co-accused in the recorded conversation is concerned, learned Senior Counsel would submit that the Investigating Officer obtained voice samples of both of them without Court's permission. For obtaining voice samples, they were asked to read out inculpatory material in the conversation. The same is improper. Reliance has been placed on the Apex Court's judgments in the cases of (i) **Sudhir Chaudhary and ors. Vs. State (NCT of Delhi), (2016)8 SCC 307** and (ii) **Ritesh Sinha**

Vs. State of Uttar Pradesh and anr., (2019)8 SCC 1. Learned Senior Counsel for the applicant, would, ultimately, urge for allowing the application.

7. Learned APP and learned counsel for the informant/intervenor would, on the other hand, submit that it is a serious offence. Although the case is based on circumstantial evidence, there is strong material to indicate the applicant's involvement in the crime in question. It was also submitted that the charge has been framed. The observations, if any, likely to be made by this Court, may affect the trial of the case. Both learned counsel, therefore, urged for rejection of the application.

8. Considered the submissions advanced. Perused the police papers relied on.

9. There are statements of the widow of the deceased and other material witnesses as well, to indicate that the applicant had extra-marital relationship with her for about 3-4 years. The statement of the widow of the deceased indicates her to have suspected the applicant as mastermind of the crime. True, initially,

it was reported as a motor accident. There are statements of the witnesses to that effect as well. The fact is, however, that there was no material to indicate involvement of the two vehicles in the alleged accident. The persons, who claimed to have had witnessed the accident, later on, stated to have made such statements at the instance of the brother of the deceased, only with a view to see that the widow and the child of the deceased would get some money of insurance claim by filing motor accident claim petition. There are statements of some of the persons to indicate the applicant to have had approached them so as to hire them for committing murder of the deceased. Earlier, two-three such plans had failed. These observations are made on the basis of the statements of the persons, who had been approached by the applicant.

10. The applicant is financially sound. The offence is serious one. True, the case is based on circumstantial evidence. If the applicant is granted bail, there is every possibility of him to influence the prosecution witnesses. The charge has already been framed. It would, therefore, not desirable for this Court to sift the prosecution material at this stage. There is also material to indicate the applicant to have been in constant contact with the co-accused on

cell-phone. He used number of sim cards. The sim cards were purchased in the names of some other persons only with a view to hide the identity. The co-accused, who eliminated the deceased at the behest of the applicant, has preserved the telephonic conversation between the applicant and him. The same is part and parcel of the prosecution material. The voice samples of the applicant and the co-accused were obtained. They did not raise any objection when it was being obtained. Whatever were grounds of objection raised here, could very well be dealt with by the trial court.

11. It is reiterated that the offence is serious one. There is material indicating the applicant's involvement in the crime in question. The charge has been framed, meaning thereby the trial has commenced.

12. In view of the above, this Court is not inclined to allow the application at this stage. Hence, the following order:-

- (i) The application fails. The same is rejected.
- (ii) The trial Court is requested to expedite hearing of the case and conclude the same within a period of one year from the date of receipt of a copy of this order.

- (iii) In case the trial could not be concluded within the time frame, the applicant would be at liberty to move an application for bail.

[R.G. AVACHAT, J.]

KBP