

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2120 OF 2021
IN
CRIMINAL APPEAL NO. 452 OF 2021

SANDIP BAHIRUNATH THOPATE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Satej S. Jadhav
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. This is an application for bail pending for final disposal of Criminal Appeal No. 452/2021.

1. The Applicant was the Original Accused No.5 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 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, when the deceased Himmat Jadhav travelled from Ahmednagar towards Aurangabad on a motorcycle driven by Santosh Chavan, he was shot at from behind because of which, he suffered bullet injury and died at a place called Pandharipul. Shot was fired at by Accused No.1-Krushna Korade, Accused No.2-Somnath More and Accused No.3-Ajinath Thombare. The prosecution case against the Applicant is that one Raju Shete was the main conspirator, who wanted to eliminate the deceased. The case against the present Applicant is that he introduced the three assailants to the accused no.4, thereby facilitating commission of the murder.

3. Learned Counsel for the Applicant submitted that as far as this Applicant is concerned, the evidence is based on purely circumstantial nature. The allegation is that a conspiracy was hatched at a place which belonged to the Accused No.4 and at that time, the present Applicant was present and had introduced the Accused Nos. 1, 2 and 3 to him. He submitted that there is no admissible piece of evidence and therefore the conviction could not have been recorded.

4. Learned APP submitted that the Applicant was using a telephone of which CDR is available, which shows that the Applicant was in touch with the assailants as well as the co-conspirator – Accused No.4.

5. We have considered these submissions and we have perused the relevant evidence as well as the relevant discussion in the impugned judgment.

6. The prosecution case is that the Applicant introduced these assailants to Accused No.4 in the office of Accused No.4. The prosecution has examined PW-9 – Ganesh Agale, to prove that the

Accused No.4 had shown that particular place. PW-9 – Ganesh had turned hostile and has not supported the prosecution case. In any case, the statement given by Accused No.4 had not led to discovery of any fact. The portion describing the incident in that statement is inadmissible. It cannot be used against any of the Accused. The other allegation was that the Applicant was using a mobile phone belonging to one Shankar Sathe, however that witness was not examined. The prosecution relies on the evidence of the Investigating Officer. He has deposed that this Applicant was using Shankar Sathe's phone, which was used in hatching the conspiracy. Again this evidence is not admissible because the Investigating Officer does not have any personal information about this fact and no witness is examined to establish this fact. Besides this, there is absolutely no evidence against this Applicant.

7. The learned Judge in judgment in paragraph No.205 has discussed the circumstance against the Applicant and he has relied on all these inadmissible circumstances against the Applicant. This discussion is not tenable in law.

8. In this view of the matter, the Applicant has made out a case for his release on bail during pendency of the 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 PR. 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.]

Najeeb...