

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

CRIMINAL APPLICATION NO. 2121 OF 2021
IN
CRIMINAL APPEAL NO. 453 OF 2021

RAHUL BABASAHEB DARKUNDE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Gaikwad Satish A.
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 final disposal of Criminal Appeal No. 453/2021.
2. The Applicant was the Original Accused No.6 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.

3. The prosecution case is that on 13.09.2016, the deceased Himmat Jadhav was travelling with PW-1 Santosh Chavan from Ahmednagar towards Aurangabad, when they reached a place called Pandharipul, the deceased was shot at from behind by Accused No.1-Krushna Korade, Accused No.2-Somnath More and Accused No.3-Ajinath Thombare. He succumbed to his injuries. There is no dispute that he died by gun shot injury. During trial, the prosecution examined 25 witnesses. The evidence against the Applicant is that he informed the assailants about the movement of the deceased and he had met the deceased prior to the incident. Therefore, according to the prosecution case, he was part of the conspiracy.

4. Learned Counsel for the Applicant submitted that there is no admissible piece of evidence against the Applicant. Nothing was discovered pursuant to the statement given by him, therefore the statement is inadmissible under Section 27 of the Evidence Act. He submitted that allegedly he was using a phone belonging to Accused No.7 – Javed, but there is nothing to show that the same phone was actually used by him. There is no such independent evidence.

5. Learned APP submitted that there are CDR showing that the said phone number was used by the Applicant in keeping in touch with the assailants and other co-conspirator. He submitted that Investigating Officer has proved the memorandum panchanama through which the Applicant had shown place where he had met the deceased.

6. We have considered these submissions and we are unable to agree with the submissions of learned APP. As far as pointing out of the hotel is concerned, the prosecution has examined PW-10 – Amol Khamkar. He had turned hostile. According to the prosecution case on 30.05.2017, the Police and Pancha went to that hotel, where the

Applicant had met the deceased and from that point, he had given information of the movement of the deceased to the assailants. However, besides the fact that PW-10 has turned hostile, the memorandum statement does not lead to recovery or discovery of any fact and therefore in any case, the statement made in that memorandum is inadmissible and cannot be used against the Applicant. The evidence of the Investigating Officer also does not help the prosecution case in that behalf. The trial Judge has discussed this issue in Paragraph No. 212 and 213. He has relied on inadmissible piece of evidence and has held that circumstance against the Applicant. As far as the use of phone belonging to Accused No.7 is concerned, there is no evidence to support this theory. The evidence of Investigating Officer is of no use because he did not have any personal knowledge about any such fact.

7. Thus there is hardly any admissible piece of evidence against the Applicant. 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.]

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