

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.360 OF 2021

Prashant Devrao Sankhe	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Aabad Ponda, Senior Advocate a/w Ashish Raghuvanshi i/b S.G. Rajput for the Applicant.

Smt.Rutuja Ambekar, APP for the State.

CORAM : BHARATI DANGRE, J
RESERVED ON : 29th JULY 2022
PRONOUNCED ON : 30th SEPTEMBER, 2022

P.C.

1] The Applicant is facing charges in Sessions Case No.99/2019 pending before the Sessions Court, Palghar for the offence punishable under Sections 302, 364, 365, 120B, 201 read with 34 of the Indian Penal Code.

2] The offence came to be registered with Palghar Police Station, on 09.05.2019 and on 14.05.2019 the Applicant came to be arrested. On completion of investigation charge-sheet has been filed on 22.10.2019. Bail Application being rejected by the Sessions court, the Applicant approached this Court as he is presently housed in Thane Central Prison.

3] It is the case of the prosecution that one Canbara Company at Palghar is owned by one Ankit Shetty and in which co-accused Smita Shetty was Manager. The Applicant is the owner of M/s. Dipa Industries which was supplying labour and raws material to the Canbara Company and even used to run canteen there. The prosecution allege that deceased Arif Shaikh was close to Ankit Shetty as he was engaged in civil work in Canbara Company. The Applicant and co-accused Smita Shetty were on good terms and it is alleged that with her connivance the Applicant committed misappropriation in the Company, which was disclosed by Arif Shaikh to the owner Ankit Shetty. As a result, Smita Shetty was transferred to Bombay Office, but she refused to accept the transfer order and resigned. This had an adverse impact on the working of the Applicant and therefore he entered into a criminal conspiracy with the co-accused persons and abducted deceased on 09.05.2019 at about 1.30 p.m., committed his murder and in order to destroy evidence burned his body, by setting it ablaze.

4] The Investigating machinery was set into motion on a complaint filed by one Ajay Raju Mhaske on 09.05.2019, stating that 2-3 unknown persons had abducted the deceased in an auto-rickshaw and was taken in Scorpio car. He, further, state that when he visited Palghar Railway Station and enquired with the auto-rickshaw drivers in the area about presence of Airf Shaikh, who was a normal commuter from the said station by showing his photograph, one Ashok Bhaskar Mali identified the photograph and informed that he had travelled in his auto-rickshaw and at around 1.30 p.m., 3-4 persons arrived on the spot from a Scorpio car and abducted Arif by forcefully dragging him into the car which proceeded towards Palghar.

Ajay Mhaske whose statement is treated as FIR admittedly is not an eye witness to the incident of kidnapping.

5] The FIR was registered against unknown persons. However, in his supplementary statement recorded on 09.05.2019 itself where he disclosed on the basis of information received by him that when the Auto-rickshaw driver was plying Arif in his auto-rickshaw, there was one pick up vehicle stalled behind Dr. Batra Company and when he stopped the auto-rickshaw behind it, a white colour Scorpio arrived at the scene and four persons abducted Arif. The complainant expressed that a discord was going on between the Arif and Prashant Sankhe and he has specifically expressed possibility of involvement of the Applicant.

In his further statement recorded on 12.05.2019 he disclosed the co-relation between the Applicant and Smita Shetty and referred to her transfer. He also stated that on 09.05.2019 at 1.30 p.m. when he was proceeding towards his house for lunch, he noticed white colour Scorpio of Prashant Sankhe being reversed and he had noticed that the car was driven by the Applicant and one Chinu and he was aware all this since the complainant used to accompany his boss to Canbara Company. He also supplied information that the pick up van which was standing ahead when the deceased was being plied in auto-rickshaw, was also belonging to the Applicant and it was driven by one Prashant Mahajan. He also gave information that he had seen Prashant Mahajan loitering in the area from where his boss used to commute and when the police took the vehicle in possession, he identified it to be belonging to the Applicant.

6] The eye witness Ashok Mali also gave his statement about the

actual incident as he had narrated to Ajay who lodged the complaint. In his supplementary statement, he has given number of pick up jeep and white colour Scorpio in which Arif was abducted. Statement of Ajay Mhaske is also recorded under Section 164 of the Cr.P.C.

Accused No.2 led to the spot where body of the deceased was burned. The partially burned parts of the body and plastic can pieces and two keys were recovered from the spot.

7] The investigation led to seizure of one Vivo mobile black in colour at the instance of one Umesh Sharma, whose statement is to the effect that the said phone was given by the Applicant to him to be destroyed. The other two mobiles were also thrown in Vaitarana, which were also seized. The prosecution has established that the mobile phone was belonging to the deceased, as the bills were seized. At the instance of Applicant there is recovery of one nylon rope, which was used to strangulate and tie the deceased. The two keys recovered from the spot shown by accused No.2 were taken to the house of deceased to check if the door opened with the same and the attempt was successful.

8] The investigation has revealed that on 18.04.2019, there was meeting in the office of applicant and the meeting was attended by co-accused Prashant Mahajan, Sanved @ Chinnu Sankhe, Dilavar Singh, Omkar, Ashutosh Patil, Shiva Thakur, Hareshwar Kudu and in this meeting a conspiracy was hatched by the present Applicant with co-accused to kidnap Arif and to commit his murder.

The present Applicant took the responsibility to execute the plan and commit the offence. As a part of conspiracy, the responsibility was assigned to each and every accused and investigation has revealed

that that Prashant Mahajan was assigned responsibility to maintain close surveillance and to kidnap Arif, whereas, the responsibility to destroy the dead body after committing the murder was assigned to Shiva Thakur and the Applicant was entrusted with the responsibility to gather the co-accused persons for giving effect to the conspiracy.

9] Statements of 7 witnesses are recorded under Section 164 of the Cr.P.C. and from their statement the role attributed to the present Applicant has clearly surfaced on record. Amongst the statements, the statement of Ismail Gul Mohd. Shaikh @ Aslam, Shizin Gopinathan and Anil Pal, recorded by the investigating agency are relevant. Ismail Gul Mohd. Shaikh and Shizin Gopinathan, have disclosed that on 07.05.2019 when they were called by the Applicant, several co accused were present. An attempt was made to give effect to conspiracy on 07.05.2019 and 08.05.2019, however, on these two dates, Arif did to come on the spot. But ultimately on the very next day, the accused persons arrived at the spot, when at 13.30 hours, Arif was proceeding from Palghar station to his Company situated at Kashipada, Old Satpadi Road. Accused Akshay Patil who was driving pick up van, obstructed the rickshaw in which he was travelling and he was kidnapped. The present Applicant alongwith co-accused Ashutosh Patil was driving Fortuner car which arrived at the spot. It is the Applicant who instructed co-accused Akshay Patil to drop other accused persons at Palghar. Investigation has also revealed that the present Applicant alongwith co-accused took the Applicant in the Scorpio car to the spot where co-accused Shivaji Thakur was present. He was strangulated by nylon rope as per instructions of Shivaji Thakur, and body was disposed off.

10] During the course of investigation, spot panchanaam was conducted on 10.05.2019 and the Scorpio car, pick up van, Fortuner car, Hundai I-20 which were involved in the commission of offence came to be recovered.

The CCTV footage of Sushila Palace Hotel is also obtained during investigation which reveal that soon after commission of offence co-accused Shivaji Thakur, Omkar, Ashutosh Patil and Akshay Patil arrived at the hotel for lunch between 3.21 to 4.40, on the day when the incident took place.

The location of the Applicant on the basis of CDR at the time when the incident took place is found to be the same where the vehicle White colour Hundai I-20 was seized. Even one nylon rope and one bundle of nylon rope has been recovered from the applicant vide memorandum 21.05.2019 recorded under section 27 of the Indian Evidence Act.

The DNA Analysis has revealed that the remains of the body which was found on the found is of the biological child of Mohd. Masudali Mohd. Ismailali Shaikh and Akbaribegum Masudali Shaikh.

From the material placed on record, role of the Applicant as prime accused and main conspirator has surfaced on record.

11] Considering various circumstances, which connect the applicant who give effect to the conspiracy, and considering the role attributed to him, in my considered opinion, he do not deserve his release on bail.

Hence, the Application is rejected.

[BHARATI DANGRE, J]