

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.987 of 2022

Syed Muzzamil Hasan Sirajul Hasan .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Majeed Memon with Tapish Jain, Mateen Qureshi, Khalil Girkar for the applicant.

Ms.P.N. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 24th AUGUST 2022

P.C:-

1 The applicant is charged for committing murder and for causing disappearance of evidence vide charge-sheet submitted by Bangur Nagar Link Road police station, filed on 11/1/2019 in C.R.No.335/2018.

2 The deceased is one girl, aged 20 years by name Mansi Dixit and the prosecution accuse the applicant of doing her to death, as he was acquainted with the girl a little while ago, and had developed liking for her and he invited her for a photo shoot in his house and sought for sexual favour. On her refusal, it is alleged that he had done her to death by hitting her in her head and by strangulating her.

3 It is the case of the prosecution that on 15/10/2018, a call was received in the control room, informing that a suspicious suitcase was found at Malad(West). On opening the same, it was found to contain dead body of a female. A complaint lodged by the Police Constable, which resulted in registration of C.R.No. 335/2018 against the unknown person.

Investigation was initiated by Bangur Nagar police station and upon inquiry, a taxi driver, Prakash Chavan gave his statement to the police that he had given a phone call on Number '100' and informed the police that one chocolate colour bag/suitcase carried by a passenger, who had boarded his taxi/Swift Car and who was dropped at the given point. He stated that his cab was booked and he picked up the passenger from Mittal Nagar and the passenger was carrying a huge travel bag, and when asked to put it in the booty, he was informed that he had to take him to the Airport. However, the passenger changed the drop location to Malad Link Road. Since the driver received the change in location, he took him to the drop location and the passenger told him to take the vehicle ahead. On parking the car, the passenger alighted, along with the bag and for some time, kept standing on the road with the bag. The driver drove ahead, but was suspicious about the movements of the passenger and he kept watch on him through a mirror in his vehicle and took a U-turn, so as to watch his activities. When he gave a call to the

police, he noticed that the passenger stopped another rickshaw and boarded the same, leaving the bag on the spot where he had got down from his taxi.

During investigation, statement of a driver of Ertiga Car bearing No. MH-04-JK-2543 is also recorded, where he narrated that he received booking in the name of Syed at around 14.22 hrs and when he reached the location at B-27, Mittal Nagar Road, Andheri, the person who had booked the taxi, asked him to bring the car in the parking lot. Accordingly, when the watchman opened the gate, he gained an entry into the compound and parked his car. He noticed a 20 year old boy coming out of the lift, with a huge chocolate suitcase/bag. The boy asked for his help to load the bag in the boot, and the driver assisted and asked him, why the bag was so heavy. He did not get any response, but was told that he has to be dropped at the Airport. However, he picked up the bag and went inside the lift and returned back without the same and asked the driver whether any amount is payable to him. He told the taxi driver that he is cancelling the booking as his brother has booked a Xylo car since 4 – 5 people had to travel and therefore, he cancelled booking of his taxi.

4 The watchman of the building corroborate the version of the two taxi drivers. Apart from this, he also state that at around 12.30 p.m, one girl wearing blue colour jeans and black colour top and a jacket, entered into the Society and from the CCTV camera, he noticed that she went on 2nd floor in B-27/202,

where the applicant Syed was residing. He noticed one Maruti Ertiga Ola cab entering into the compound between 2.00 to 2.30 p.m, but after some time, the car left empty. After short time, white colour Maruti Dezire Ola cab entered the compound and the applicant came down with a big travel bag which was kept inside the car.

5 All the aforesaid three witnesses identified the bag which was carried by the passenger/applicant. The CCTV footage is recorded and compiled in the charge-sheet which record the happenings from 12.25.04 to 14.17.12.

The CCTV footage record the movements of the applicant and the deceased who are seen entering in the flat, but only the applicant is seen exiting with a bag. The two vehicles i.e. Ertiga Ola and Swift Dezire Ola are also seen entering in the compound and the applicant is seen talking with the driver of the Swift Dezire and putting his bag in the boot of the car.

6 Other incriminating material in the charge-sheet is the location of the deceased and the applicant, on the date and time of commission of the offence. Apart from the presence of the applicant on the spot, location of the phone of the deceased is seen to be “building No.17 and 18, Mittal Nagar” from 13.32.58 to 18.45.11.

Apart from this, Test Identification Parade was also conducted and both the taxi drivers Prakash and Gajanan have

identified the applicant. Their statements are recorded u/s.164 Cr.P.C and compiled in the charge-sheet.

7 The learned counsel Mr.Majeed Memon, while pleading the case of the applicant, would submit that he is a young boy, aged 21 years and he has no criminal antecedents. His submission is, the material in the charge-sheet fall short of his connection to the death of the deceased girl and the learned counsel has invited my attention to the statement of the mother Padma Dixit, who has stated that her daughter Mansi was staying in Mumbai and was into modelling. She had stated that on 14/10/2018, she had returned to Mumbai from Bangalore and during the shooting at Bangalore, her daughter replaced another model and therefore, the mother state that inquiry should be made with the said girl. According to the mother, between 11.00 to 12, her daughter had entered in one Cafe and she had posted an Instagram photo. She therefore, asked the inquiry to be conducted in the Cafe.

The statement of the mother, when carefully perused, is of no consequence.

8 Learned counsel Mr.Memon has relied upon the decision of the Hon'ble Apex Court in case of Sukhwinder Singh Vs. State of Delhi, where the charge under Section 302 on trial, resulted in a conviction u/s.304 Part II of the IPC.

The aforesaid decision do not provide succor to the learned counsel since depending upon the facts of the case, the offence u/s.302 IPC was converted into Part-II of Section 304. the above conversion was after the trial was concluded and when on appreciating the evidence, it was found that there was no intention to kill.

Another decision relied upon by the learned counsel in the case of Joseph vs. State of Kerala, 1994(6) SCC 535, on similar lines would also not take the case of the applicant any further.

9 Merely because the applicant is a young boy, is not by itself a ground to release him, in the light of the material compiled against him in the charge-sheet and the prosecution collating that the circumstances against him, prima facie, indicating that, it is only the applicant who had committed the offence.

10 I am, therefore, not inclined to entertain the application and the same is rejected.

I must clarify that the observations made above are prima facie in nature and limited for the purpose of adjudication of the present applicant, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged.

(SMT. BHARATI DANGRE, J.)