

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2139 OF 2021

Hemant Ramashray Gupta @Gibbs

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Gaurav Bhawnani i/b. Mr. Khan Abdul Wahab for the Applicant.

Ms Sharmila S. Kaushik, APP for Respondent-State.

Mr. Prakash Sawant, API, DCB-CID Unit-12 Mumbai is present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th MARCH, 2022.

P.C.:-

1. This is an application under Section 439 of the Cr.P.C. by the Applicant, who is facing trial in Sessions Case No.717 of 2011 pending before Court No.17 of Sessions Court, Mumbai, for the offences punishable under Sections 143, 147, 148, 302, 323, 342, 364, 365 and 395 r/w. 149 of the IPC.

2. Heard Mr. Gaurav Bhavnani, learned counsel for the Applicant and Ms Sharmila Kaushik, APP for learned APP for the Respondent -State.

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Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The case of the prosecution is that during the intervening night of 4th and 5th June, 2011 the Applicant and other co-accused entered into a conspiracy to abduct Chetan, Bharat, Ganesh and Dinesh and in pursuant to the said conspiracy, abducted the said four persons and committed their murder.

4. The material on record, particularly the evidence of the approver prima facie reveals that four persons by name Chetan, Bharat, Ganesh and Dinesh were abducted and later murdered. It is true that the offence is of heinous nature. However, the evidence of the approver PW1-Vaibhav Chavan reveals that the role of the Applicant was confined to abducting Ganesh Karanj. The evidence of approver indicates that all these deceased persons were abducted at the instance of the co-accused Uday Pathak and they were taken to a place near Shivalay Temple behind Tadipasha. The evidence of PW1 indicates that while they were at the temple along with four abducted persons the co-accused received a phone call from Uday stating that he was released by police and that he would arrive at the place. PW1 has deposed that upon receiving the said phone, the Applicant, Manoj Gujar, Amit Soni and Babu Chintale left the place. The evidence of PW1 further reveals that the decision to take said four

abducted persons to Appa Pada forest was taken after Uday had reached near Shivalay Temple. Initially said Uday had told them that they would take them to forest and remove their clothes and leave them in the forest. It was only after reaching the forest that Uday told the other co-accused, who were present along with him, that all the four captives should be killed as they had assaulted him and killing them would create terror and enhance his reputation. Subsequently, said Uday and other co-accused killed all the four captives.

5. The statements of the other eye witnesses Amit, Manoj and Chetan also prima facie reveal that the Applicant herein was involved only in abducting Ganesh Karanje. The CFSL report shows that no blood stains were detected on the clothes of the Applicant, which were recovered pursuant to the disclosure made under Section 27 of the Evidence Act. There is no material on record to prima facie indicate that he was involved in committing murder or that he had knowledge that the four captives were abducted for causing their death. Prima facie he was not a party to a criminal conspiracy to cause death of these captives. On the contrary, as noted above, the evidence of the approver reveals that decision to take the four captives to the Appa Pada Forest and to kill them was taken only after this Applicant had left the place at Shivalaya Temple.

6. The Applicant was arrested on 08/06/2011 and charge sheet was filed in the month of September-2011. by order dated 02/08/2017 in Bail Application No.1477 of 2016 this Court had directed the Sessions Court to dispose of the matter expeditiously. Again by order dated 20/02/2017 Bail Application No.2008 of 2016 filed by the co-accused this Court had directed to dispose of the matter within 10 months from the date of receipt of the order. Despite the said direction, case is pending till date and the Applicant is in custody since last 10 years 9 months.

7. A report was called from the Sessions Court for the delay in disposing of the case expeditiously. The report indicates that so far 24 witnesses are examined and 17 to 18 witnesses are yet to be examined. Reasons for the delay are stated to be lengthy examination and cross-examination by Special PP and by learned counsel for the accused, lockdown declared due to outbreak of Covid-19 pandemic and pendency of other old custody cases. The learned Sessions Judge has sought extension of further one year to dispose of the case.

8. It is thus seen that the trial of the case will not conclude at least for another one year. Considering the role attributed to the

Applicant and also considering the fact that he is in custody since last over 10 years and the trial is not likely to conclude in another one year, in my considered view this would be a fit case to release the Applicant on bail.

9. Hence, the application is allowed on following terms and conditions:-

(i) The Applicant shall be released on bail on furnishing bail bonds of Rs.1,00,000/- with one or more sureties in the like amount.

(ii) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and /or change of residence or mobile details, if any, from time to time.

(iii) The Applicant shall not interfere with the witnesses and /or tamper with the evidence in any manner.

10. The application stands disposed of.

11. Time to dispose of the sessions case is extended by a period of six months.

(SMT. ANUJA PRABHUDESSAI, J.)