

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2314 OF 2021

Vijay Kisan Wakh .. Appellant
Versus
The State of Maharashtra .. Respondent
...

Mr.Suresh Sabrad with Mr.Suraj Naik i/b Mr.R.D. Suryawanshi
for the applicant.
Mrs.Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 11th AUGUST, 2022

P.C:-

1 The applicant came to be arrested in connection with C.R.No.I-49 of 2018 registered with Ganeshpuri Police station on 3/5/2018. The said C.R. invoke Sections 302, 201 read with Section 120B of the IPC and Sections 128 and 177 of the Motor Vehicles Act.

The applicant is incarcerated for more than four years and it is submitted that the trial will consume some more time since the charge is not framed till date.

2 The case of the prosecution as contained in the charge-sheet is based on circumstantial evidence. It implicate

four persons as accused and the applicant is charged as accused no.3.

As per the prosecution, Accused no.2 Sakshi Nimse @ Vaishali is the wife of Shailesh Nimse (deceased) and the prosecution allege that since he was carrying an extra-marital affair, she gave a contract to accused no.1 Pramod Mukte for eliminating the deceased for Rs.Three lakhs and made the payment of Rs.1,50,000/- to accused no.1.

In furtherance of the conspiracy, the accused no.1 with the aid of accused nos.3 and 4 entered the house of the deceased and strangled him by a piece of cloth. The prosecution allege that for the purpose of giving effect to the said conspiracy, three accused persons travelled triple seat on a Pulsar motorcycle MH-04-FY-5375 and while the deceased was sleeping in his bedroom, he was strangled and thereafter, his body was put in the 'boot' of his Sonata Embera bearing No. MH-06-AN-786, which was carried to a forest area in Devchale. In order to destroy the evidence, the body was set on fire with the help of the twigs lying nearby and some paper thickets by putting petrol.

The wife of the deceased i.e. accused no.2 committed suicide while in judicial custody.

3 The entire case of prosecution being based on circumstantial evidence, it rely upon the recovery of articles from the accused on their arrest and the CCTV footage. There is

recovery of the red Pulsar Motorcycle from accused no.1 Pramod. There is recovery of a green colour bag with its belt being cut from accused no.2 Sakshi. The prosecution case is for strangulating the deceased, the said belt was put to use. As far as the present applicant is concerned, there is a recovery of one knife which is alleged to have been used for cutting the belt of the bag which was recovered from accused no.2 through a discovery panchnama.

4 Another evidence is the CCTV footage and there are four footages which are compiled in the charge-sheet, after obtaining certificate u/s.65B, the description of which is as under :

- (i) The first footage at around 22.43 dated 19/4/2018 is from the petrol pump on Nasik Highway Asangaon, where the three accused persons are seen on a motorcycle.
- (ii) The second footage is from Gurunanak Dhaba, at 22.58 hours, where the accused persons and the motorcycle is seen.
- (iii) The third CCTV footage from the Bank at 1.52, 2.15 and 2.18 where the accused and the motorcycle is seen.
- (iv) The CCTV Footage of M.G English Medium, Vedvahal Shahapur, 3.58 am. In this footage, the motorcycle and the car of the deceased is seen.

5 The statement of one mechanic at Ambadi Naka, Bhiwandi, is also recorded, who state that at 4.30 am in the morning of 20/4/2018, somebody knocked at his door and he

noticed three persons whose description is given by him and it is stated that they were having a red colour Pulsar bike. He was informed that the tyre of their vehicle was punctured and he was asked to correct it. He performed the assigned task and was given Rs.300/-. He only gave a description of the persons and state that he was not aware who these persons are. The said witness is not subjected to Test Identification Parade.

6 The spot panchnama reveal that the spot in a forest area, where the body was burnt. A green colour cloth is also found nearby. On the kacha road, the tyre marks are seen. Five pieces of twigs and one green colour cloth is also recovered from the spot. Nearby the spot, a White colour Hyundai car belonging to the deceased was found to be standing and it was seized, with a pair of chappals recovered from the rear side of the vehicle. A mobile cover was also recovered form the said car.

This is all the material in the charge-sheet, which charge the accused u/s.302 of IPC.

7 Since the case is based on circumstantial evidence, it is imperative for the prosecution to establish the guilt beyond reasonable doubt and the inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person. The circumstances from which an inference as to the guilt of the accused is to be drawn, will have to be established

by the prosecution beyond reasonable doubt and it will be required to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. It is settled principle of law that when the case depends upon the conclusion drawn from those circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt.

If there is any reasonable doubt about the guilt of the accused, he is entitled to be acquitted.

8 The present case deserve to be decided on the touchstone of the law relating to circumstantial evidence as laid down by the Apex court in Hanumant Vs. State of Madhya Pradesh, AIR 1952 SC 343, wherein it was held as under :-

“It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused”.

It is settled position that the onus lie on the prosecution to prove that the chain is complete and the infirmity of lacunae in prosecution cannot be cured by false defence or plea.

9 The evidence compiled in the charge-sheet against the accused, fall short of the above. The applicant is charged for the offence of murder with Section 201, only on the basis of a CCTV footage and Guurnanak dhaba where the applicant is seen. As far as third and fourth CCTV footages, the applicant is not specifically seen and when the learned APP is asked to throw some light, she state that it cannot be seen in the CCTV footage as to who is seen sitting in the car of the deceased and who is driving the vehicle. Thus, mere recovery of some cash and a small knife at the instance of applicant u/s.27, cannot be said to be sufficient to connect him to the subject crime.

10 In any case, the investigation is complete and charge-sheet is filed and the applicant is incarcerated for more than four years. With the trial not appearing to be in foresight the applicant deserve his release on bail.

11 Observations made above are limited to the adjudication of the present application and the learned Judge while trying the accused shall not be influenced by the above observations. Hence, the following order :-

ORDER

(a) The Applicant – Vijay Kisan Wakh in connection with C.R.No.I-49/2018 registered with Ganeshpuri Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(c) The Applicant mark his attendance on first Thursday on every trimester.

The Application is allowed in the aforestated terms.

(SMT.BHARATI DANGRE,J)