

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1855 OF 2022

Dipak Dyandev Kasabi ...Applicant

vs.

The State of Maharashtra ...Respondent

VISHAL
SUBHASH
PAREKAR

Ms. Pooja Agarwal, for the Applicant
Mr. Y.Y. Dabake, APP, for the State.

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VISHAL SUBHASH
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Date: 2022.07.09
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CORAM : N. J. JAMADAR, J.

DATE : JULY 07, 2022

P.C.:

1. The applicant, who is arraigned in C.R. No. 177 of 2016 registered with Khed police station, Pune for the offences punishable under sections 302, 396 and 201 of Indian Penal Code, 1860, has preferred this application to enlarge him on bail.

2. The prosecution case runs as under.

Arun @ Mangesh Chabukswar (the deceased) was the nephew of Siratram Chabukswar (the first informant). On 27th July, 2016 the deceased was working as a driver on the Scorpio vehicle bearing registration No. MH 12 MF 0404, owned by Dilip Raskar. The said vehicle was used as a passenger car for hire. On 27th July, 2016 the deceased had left home along with car. He and another driver Bharat Gaikwad were waiting for passengers at the vehicles' station

(Gadital). At about 11.30 am two persons came thereat and had negotiations with the deceased. The deceased informed Bharat Gaikwad that he had got a contract to take the passengers to Bhimashankar. The deceased left the place along with those two unknown persons.

On 28th July, 2016 an intimation was given to the first informant that the Scorpio, of which the deceased was driving, met with an accident and it fell in a gorge at Mirjewadi. Only the car could be retrieved. The deceased was not found in the car. On 30th July, 2016 a dead body of unknown male was found at Bhomale, Tal. Khed. The said dead body was identified to be that of the deceased. There were marks of injuries by means of sharp weapons. It further appeared that the face of the deceased was crushed by means of hard objects to prevent identification. Hence, the first informant lodged the report.

3. During the course of investigation, it transpired that the deceased was done to death by six persons, including the applicant herein. The deceased was robbed of an amount of Rs. 1,600/- and a mobile phone handset. The applicant and the co-accused were arrested. Post completion of investigation, charge-sheet has been lodged.

4. The applicant has preferred this application to enlarge him on bail on the ground that there is no material to connect the applicant with the crime. The applicant further asserts that the co-accused namely Samir Inamdar and Kisan Dhandre, against whom relatively more incriminating material is pressed into service by the prosecution, have been released on bail by this Court by orders dated 10th March, 2021 and 26th October, 2021. Hence, the applicant deserves to be released on bail on the ground of parity as well.

5. I have heard Ms. Pooja Agarwal, learned counsel for the applicant and Mr. Dabake, learned APP, for the State at some length.

6. Evidently, the case is based on circumstantial evidence. The strongest circumstance, according to the prosecution, against the applicant is of last seen. This circumstance rests on the statement of Bharat Gaikwad, the co-driver of the deceased. Bharat Gaikwad stated that on 27th July, 2016 while he and the deceased were waiting for the passengers at the vehicle station (Gadital) Shirur, two unknown persons approached the deceased and, post negotiations, the deceased left with the car alongwith those two persons by informing the said witness that he had a contract to

ferry the passengers to Bhimashankar. Bharat Gaikwad apparently did not describe the features of those two persons.

7. In this context, the learned APP endeavoured to bank upon the statement of Tabaji Chabukswar, recorded on 30th August, 2016, that on 1st August, 2016 while the last rites of the deceased were being performed, the said witness Bharat Gaikwad was shown an album containing the photographs of the suspects and Bharat Gaikwad identified two persons who had boarded the car of the deceased by looking at those photographs. They were identified as Dipak Kasabi, the applicant, and Santosh Jadhav, the co-accused. The learned APP fairly submitted that no test identification parade was held to confirm the identity of the applicant as the very person who had taken away the deceased on the pretext of hiring the car of the deceased for going to Bhimashankar.

8. Apart from the aforesaid material, there does not seem any other circumstance to connect the applicant with the crime. The aforesaid material, prima facie, appears to be of inherently weak character to establish the circumstance of last seen.

9. This Court was persuaded to release co-accused Samir

Inamdar on bail, at whose instance the recovery of the clothes which the said accused allegedly wore, at the time of the occurrence, was made. The co-accused Kisan Dhandre, at whose instance the alleged weapon of offence was recovered, was also released by this Court by an order dated 26th October, 2021 opining, inter alia, that in the absence of any other material, the evidence of discovery in itself was not sufficient to detain the applicant as an undertrial prisoner.

10. In the aforesaid backdrop, I find substance in the submission of learned counsel for the applicant that the co-accused against whom more grave incriminating circumstances are pressed into service have been released on bail and, the applicant is entitled to the same dispensation. The applicant is in custody since 3rd August, 2016. The Court is informed that charge has yet not been framed. It is very unlikely that the trial can be concluded in the near future.

11. In the light of the aforesaid nature of the material pressed into service against the applicant and the period of his incarceration, further detention of the applicant appears to be wholly unwarranted and unjust. I am, thus, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Dipak Dyandev Kasabi be released on bail in connection with C.R. No. 177 of 2016 registered with Khed police station, Pune on furnishing a P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.
- 3] The applicant shall not tamper the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- 4] The applicant shall regularly attend the proceedings before the jurisdictional Court.

(N. J. JAMADAR, J.)