

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2703 OF 2021

Ashish Kanhayalal Karira

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Ganesh Gole a/w Mr. Ateet Shirodkar, Ms. Piyusha Patil for the Applicant.

Mr. S.V.Gavand, A.P.P. for the State/Respondent.

Mr. D.K. Kapse, P.I.Vitthalwadi, Police Station.

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CORAM: BHARATI DANGRE, J.
DATED : 29th SEPTEMBER, 2022

P.C:-

1. Heard learned counsel for the applicant and learned APP Mr. Gavand. As indicated earlier Mr. Gavand has placed on record the CDR details of the phone number alleged to be used by the applicant.

His attempt is to demonstrate that the applicant's tower location from his mobile no. 917888187771 was the same as that of the deceased, at the given point of time i.e. at 23:06:56 hours on 24/08/2019 i.e. at Friends Medical Section 30, Vitthalwadi, Ulhasnagar.

2. Upon the said material being placed, the learned counsel for the applicant, from the charge-sheet has invited my attention to the details of the customer, who was using the mobile number. 7888187771, as obtained from the Nodal officer, which reveal that the said number is standing in the name of the co-accused Sagar Thakur and its date of activation is as 8/12/2017.

Though the learned APP make a feeble attempt to demonstrate from the arrest panchnama, a sim card was recovered from a Silver colour mobile phone, which was seized from the present applicant, unless and until there is some cogent and reliable material to demonstrate that this sim card was used by the applicant, the said tower location circumstance would not take the case of the prosecution any further.

3. The prosecution case is based on circumstantial evidence and the investigating machinery was set into motion, when the FIR was lodged by the brother of the deceased on 25/08/2019, alleging that on he received information that his brother Dinesh was found in an injured condition. He expressed suspicion, that the two applicants could have murdered him since they consume liquor together.

In the course of investigation several statements of several

witnesses have been recorded, which include the statement of one Hitesh Chandani, who state that, on 24/08/2019, the owner of the godown, Manish Wadhava shut the godown and near the factory, he noticed that present applicant along with his friend whose name is not known to him but it is stated by him that he could recognize him if shown. He noticed that they were abusing each other. At that very time his master along with Gurubacchan Singh asked him to accompany on scooter and they went to Mahavir Hospital.

Statement of Gurubacchan Singh is also recorded and he also reiterate that he noticed the present applicant with his friend and there were abuses hurled between them. Statement of their master Manish Wadwa is also recorded, where he state that he noticed Ashish Karira and his friend who arrived on the spot and they were drunk. Presuming that Ashish i.e. applicant was a hardened criminal and apprehending that some brawl would take place, he asked the workers to shut the godown. After some time he noticed that a crowd has gathered infront of his factory, to be revealed that one of the friend of Ashish, was lying in an injured condition.

4. The inconsistency in the version of the three statement is writ large.

Chandu Raheja whose statement is also compiled in the charge-sheet, and apart from this one Sagar Patil statement is also there which the prosecution seek to rely upon as extrajudicial confession.

It is settled position of law that extrajudicial confession is a weak piece of evidence and in absence of any other corroboration it cannot be authentically relied upon.

5. The co-accused Sagar Thakur is released on bail by this court on 11/03/2020 (BA No. 253 of 2020) by specifically recording as under:

“5. I have perused the charge-sheet. Undisputedly, there is no eye witness to the incident. The entire case is based on circumstantial evidence. The case of the prosecution is that, the complainant suspected involvement of the applicant and co-accused. The prosecution did not indicate any strong motive for commission of crime. The statement of Manish Wadhava recorded immediately after the incident do not refer to presence of the applicant. The other statement indicate that the accused were consuming liquor. Statement of one of the witnesses who is refer to applicant and the accused No.1 consuming liquor makes no reference to presence of the deceased. There is no strong evidence to show that the applicant was in company with the accused No.1 and the deceased at the time of the incident. The statement of the Sagar Patil at the most he would indicate that at about 12:30 hours

call was made from mobile of the applicant to him. Most of the statements were recorded on 5th September, 2019. The statements of the witnesses under section 161 of Cr.P.C. There is improvisation in statement under Section 164 of Cr.P.C. Thus, there is no strong circumstances to indicate that the applicant was with the deceased at the time when deceased was assaulted. Except the recovery of wooden stick. There is no strong corroborative evidence to continue detention of the applicant in custody in any circumstance. Case for grant of bail is made out.”

6. I see no reason to disagree with the said observation as if I had to consider the lacunae in case of the prosecution, which must yield benefit to Applicant, I will be simply repeating the reasoning recorded in para 5 of the said order.

7. In the wake of the above the applicant deserve his release on bail, as despite his arrest on 25/08/2019, the applicant is still incarcerated.

8. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced by the above observations in any manner.

Hence the following order.

: ORDER :

- (a) Application is allowed.
- (b) Applicant - Ashish Kanhayalal Karira shall be released on bail in connection with C.R.No. I-359 of 2019 registered with Vithalwadi Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the concerned police station on First Saturday of the Trimester between 3:00 p.m to 5:00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)