

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2575 OF 2021

RUSHIKESH PANDURANG BHINTADE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Prajakta Pawar a/w. Mr.Milind Pawar a/w. Mr.Yogesh Pawar
a/w. Mr.Hrishikesh Karwande, Advocate for the Applicant.

Mr.A.A.Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 14th DECEMBER 2021
PRONOUNCED ON : 20th JANUARY 2022**

P.C. :

1 The present application has been moved by the
applicant under Section 439 of the Code of Criminal Procedure in
Crime No.745 of 2020 registered with Police Station Hinjewadi,
for offences punishable under Section 302 and 201 read with 34
of the Indian Penal Code (IPC).

AVK

1/9

2 On 31st December 2020 the informant, who is brother of deceased, namely, Ganesh Ramdas Pinjan, lodged the report that for some unknown reason, the deceased was done to death by his friends namely, Navnath Shendge and Rushikesh Bhintade (applicant). Accordingly, First Information Report (FIR) came to be registered.

3 It appears that during the course of investigation it revealed that accused Navnath Shendge and applicant had invited the deceased for a drink. Since the deceased did not offer them more drinks, both of them assaulted by means of wooden plank on head, forehead and chest of the deceased and after killing him, put him in an autorickshaw bearing Registration No.MH-14-F-3084 and threw his body in an open plot bearing Survey No.71 at Neredutta Wadi.

4 Ms.Prajakta Pawar, learned counsel for the applicant, submits that the case of prosecution rests on circumstantial

evidence. There is no sufficient evidence on record to indicate involvement of accused. Investigation is over and charge-sheet has been filed. For all these reasons, the applicant deserves to be enlarged on bail, argued learned counsel.

5 Mr.A.A.Palkar, learned APP, on the other hand, opposed the submissions by contending that the applicant along with other accused was lastly seen in the company of deceased and then invited my attention to statements of various prosecution witnesses to substantiate his contention. According to the learned APP there is also recovery of wooden plank at the instance of applicant. Thus, there is sufficient evidence on record to prove the involvement of applicant in the offence.

6 Perused the investigation papers. I have also gone through the statements of various prosecution witnesses relied on by the learned APP.

7 First of all, I may note from the postmortem report that Column No.17 shows the various injuries sustained by the deceased. Those injuries were as many as 15 injuries on the person of the deceased. Column no.22 then shows that injuries no.1, 2, 3, 4 and 8 mentioned in Column No.17 along with corresponding internal injuries of brain (Column No.19-iii) liver and pancreas (Column No.21) and spinal cord (Column No.22) were individually sufficient in ordinary course of nature to cause death. It further shows that all the above said injuries were also collectively sufficient in ordinary course of nature to cause death. Finally, the opinion as to the probable cause of death given is "Injury to vital organs." Thus, prima facie, the deceased died because of injuries to vital organs.

8 There is also no dispute that the prosecution case rests on circumstantial evidence. It is a settled law that in order to establish the guilt in the cases based on circumstantial evidence, the chain of circumstances should be complete and must be leading to the sole hypothesis of the guilt of the accused

and excluding any hypothesis of his innocence. In this backdrop it is necessary to go through the statement of prosecution witnesses pressed into service by the learned APP.

9 Hamit Shaikh states in his statement that on 30th December 2020, at about 1.30 p.m., he saw an autorickshaw in which the deceased was sitting on the rear side and the deceased even waived hand at him. There were two other persons as well. Later on, this witness was told by Anwar that he also had seen accused Navnath Shendge driving the said autorickshaw, deceased was lying in a sleeping position while the applicant was sitting on the rear side.

10 Anwar Chandsaheb Shaikh on his part states that on 30th December 2020, at about 1.30 p.m., he had seen the deceased sitting on the rear side of the autorickshaw along with accused Navnath Shendge and applicant. Again at about 3.30 p.m. he saw the said autorickshaw going towards Bevhill Properties. Accused Navnath Shendge was driving the

autorickshaw while the deceased was lying across in a sleeping condition along with the applicant on the rear side. This was at about 3.30 p.m. on 30th December 2020.

11 The next witness is Vijay Rakshe who had also seen the autorickshaw at about 3.00 p.m. on 30th December 2020. According to him, accused Navnath Shendge was driving the autorickshaw while applicant and deceased were sitting on the rear side. Interestingly, this witness nowhere says that the deceased was lying in a sleeping position.

12 The last witness is Shyamrao Tatyaba Jadhav and to my mind is a very material witness. According to this witness, on 30th December 2020 at about 10.00 a.m., he met the deceased, applicant and accused Navnath Shendge. They were drinking liquor. He also drank and thereafter they visited one hotel and thereafter he was dropped by them on the pretext that they had to go ahead. As this witness was under the influence of liquor, he slept on the roadside near a bridge and got up at about 4.00 p.m.

What is pertinent to note from the statement of this witness is that he was along with accused and deceased right from 10.00 a.m., a material fact, which is nowhere revealed by earlier witnesses.

13 Be that as it may, the fact remains that accused Navnath Shendge and applicant were seen in the company of deceased on 30th December 2020 at or around 3 to 3.30 p.m. It is also worth noting that the dead body was found on the next day in the afternoon. Even assuming for the sake of argument that prima facie there is evidence as to the last seen theory but the time gap between the last seen theory and the recovery of dead body is not that proximate which would enable an irresistible inference that it were applicant and accused Navnath Shende alone who committed the murder of the deceased. No other evidence is forthcoming to complete the chain of circumstances. Even otherwise, the last seen theory itself, at this stage, would not be sufficient to fasten the criminal liability and would have to be supported by cogent and convincing evidence

which may be adduced by the prosecution at the time of trial. As far as recovery aspect is concerned, that will have to be seen at the time of trial.

14 Investigation is over and charge-sheet has been filed. No other criminal antecedents are forthcoming. For the aforesaid reasons, in my view, the custody of the applicant is unwarranted. In the light of material on record, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Rushikesh Pandurang Bhintade shall be released on bail in Crime No.745 of 2020 registered with Police Station Hinjewadi, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall attend the Court proceedings regularly.

- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)