

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3479 OF 2021**

Snehal Pundalik Patil .. Applicant
Versus
The State of Maharashtra .. Respondent

**WITH
BAIL APPLICATION NO. 2431 OF 2021**

Vikas Vasant Pasthe .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. S.R. Phanse i/b Nilesh Navale for the applicant in BA 3479/2021.

Mr.Niranjan Mundargi i/b N.M. Nadar for the applicant in BA No.2431/21.

Mr.S.H. Yadav, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 19th OCTOBER, 2022

P.C:-

1 The two applicants in Bail Applicatin No.2431/2021 and 3479/2021 are charged as accused nos.4 and 5 in the charge-sheet filed in the Competent Court at Palghar on completing

investigation of C.R.No.29/2021 registered on 18/2/2021. Both of them came to be arrested on 3/3/2021 on being accused of committing murder of the husband of accused no.5 – Pundlik Ananda Patil.

2 The case of the prosecution, as contained in the charge-sheet, allege that the two applicants (accused no.4 and 5) were having extra marital relationship and since the deceased, husband of accused no.5 gained knowledge about it, he subjected her to harassment and created obstruction in their affair. It is, therefore, alleged that the accused no.5 disclosed her intention to accused no.4 to eliminate her husband and he sought assistance of accused no.4 and established contact with accused nos.1 and 2, by allotting a contract for killing the deceased by arranging the necessary amount.

3 The case of the prosecution which has surfaced from the charge-sheet, disclose that on the given time and date, the accused nos.1 and 2, as they were directed to act, approached the deceased in Vasai and on the pretext that they want to hire the rickshaw, occupied his auto-rickshaw bearing No. MH-48-BF-9164 and crossed Khanivade Toll Naka and while approaching Mastan Naka, on the pretext of attending the nature's call, asked the rickshaw to be stopped and thereafter they assaulted the deceased by iron rod in his head and placed his body in the rickshaw and by turning the rickshaw upside down, on the side of the road, left the spot of incident.

4 The informant is a Police Patil who reported to Manor police station, that on 18/2/2021 at 12.30 am, in the night, he noticed a rickshaw toppled in a ditch near village Dhekale and he noticed one person in the rickshaw in an injured condition, the injuries being sustained on the back of his head, assuming to have been caused by a sharp weapon. The said person was identified as Pundalik Ananda Patil, the husband of accused no.5. The investigating machinery was set into motion and the accused persons came to be arrested.

5 The learned counsel for the applicant Mr.Niranjan Mundargi and Advocate S.R. Phanse, would jointly submit that the material in the charge-sheet fall short of establishing the charge u/s.302 IPC against both the applicants. They would submit that the prosecution has failed to establish their involvement in the subject C.R and it's case is based on assumption.

Per contra, the learned APP Mr.Yadav would vehemently oppose the application and submit that there is sufficient material to indict the two applicants which have established their connection to the subject crime.

6 I have perused the charge-sheet placed on record. As far as applicant Vikas is concerned, the prosecution attribute a discovery from him effected u/s.27 of the Evidence Act. On his arrest, he has led to one mobile with IMEI Number without sim

card. Another discovery is a bunch of three keys, two of them of a lock and one key with a Bajaj Logo Company. The discovery is from an open place near a nullah the dried hay/grass.

7 In order to bring home the guilt of the applicants, the prosecution has relied upon the statement of one Vinod Gangda. who was acquainted to the deceased, who has stated that Pundlik used to contact him on the phone number of his wife as there was some connectivity issue in his house and on 17/2/2021, he received a phone call on the mobile phone of his wife, informing that he has filled up the gas and proceeded towards Mastan Naka. He asked him to accompany him, but was refused on the ground that he was very tired. On 18/2/2021, Pundlik Patil's wife called him and informed that he had met with an accident and thereafter by taking his wife in the rickshaw, he reached Manor.

7 Another important statement on which the learned APP has placed reliance is of one Akshay Patil recorded on 2/3/2021. The circumstances in which the statement is recorded is very interesting to note.

Akshay Patil states that on 2/3/2021, when he came to Taluka, Vada for some work, he met his cousin uncle Vishal Patil, who told him to accompany him to Boisar. Therafter, by Akshay's car, thay started from Kudus at 11'O clock and reached at Boisar Crime Branch at 12.30 p.m where inquiry was made with his uncle Vishal. At 5'O clock, both of them returned to

Manor police station, where the police made inquiries from them about the murder of one rickshaw puller, and thereupon he recollected that on 17/2/2021, his uncle Vishal Patil had asked him to accompany in his Innova car and on Manor Highway, near Naupada village, he came to pick up two persons, out of which one was Swapnil Gosavi and another was Avinash Bhoir and he was acquainted to them, they were made to sit in a vehicle and brought to Ambadi. While they were travelling, he could overhear the conversation between his uncle Vishal with Swapnil and Avinash, stating that they have finished the work assigned to them by Vikas Pashte and that the remaining amount should be demanded. On 18/2/2021, he inquired with his uncle as to what Swapnil and Avinash were doing in the night hours on the spot, and his uncle disclosed to him that Vikas Pashte, the police personnel who was on duty at Kudus, was carrying an affair with another police personnel Snehal Patil and her husband is harassing them. Therefore, Vikas and Snehal told Avinash and Swapnil to kill him and throw him on the road and that is the reason why Vikas Pashte had asked Swapnil and Avinash to pick them up.

8 The whole statement prima facie appear to be doubtful and do not inspire confidence, as on going to the police station on 3/2/2021, the witness has recalled the incident on 17/2/2021. In what circumstances they happened to be there, why they happened to be there, is not clear. In connection with

this, another statement of Jitesh Dharmaraj Pashte is also recorded, who state that on 16/2/2021, Vikas Pashte came to his house and asked for the Innova car belonging to his brother-in-law, and therefore, on the next day, i.e. 17.2.2021, one friend of Vikas Pashte came to pick up the vehicle. Since witness Jitesh was on the ground, he made a phone call to Vikas who told him that Vishal has arrived at Ambadi naka, and after some time, one boy came to him and assuming that he is vishal, the innova car was given to him. It is stated that the whole day, the car was in possession of friend of Vikas Pashte.

The aforesaid two circumstances which are strongly relied upon by the prosecution, in my considered opinion, are insufficient to establish the guilt of the applicant, Ultimately, it is for the prosecution to establish it's case during the course of trial, but at present, with the sketchy material, they cannot be further incarcerated and though they may take the consequences of the accusations faced by them of murdering the husband of accused no.5, at present, awaiting their trial, they cannot be further incarcerated, as the prosecution do not express any possiblity of they being at flight risk. The offence may be serious in nature but at present, since the investigation is complete, and charge-sheet has already compiled the material collected during investigation, on the basis of which the proseuction want to bring home the guilt, the incarceration is not necessary.

Apart from this, the sketchy nature of evidence compiled in the charge-sheet, whether there is an accusation of two applicants having affair surfacing on record only in form of hear-say evidence of the witnesses and since the prosecution has failed to establish that the key which is recovered from accused no.4, is the key of the vehicle belonging to the deceased, both the applicants deserve their release on bail. Hence, the follownig order :-

ORDER

- (a) The Applicant Snehal Pundalik Patil in BA No.3479/2021 and applicant Vikas Vasant Pashte in BA No. 2431/2021 in connection with C.R.No.29/2021 registered with Manor Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.
- (b) The applicants 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 applicants shall mark their attendance with the concerned Investigating Officer on 1st Monday of every trimester.
- (c) The Applicants shall attend the trial on regular basis.
- (d) On being released on bail, the applicants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

The Applications are allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)