

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1107 OF 2022
IN
CRIMINAL APPEAL NO. 776 OF 2021**

Sachin @ Sachya Subhash Nichite & Anr. ...Applicants

Versus

The State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO. 2461 OF 2021
IN
CRIMINAL APPEAL NO. 746 OF 2021**

Akash Gajanan Salunkhe ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Sudeep Pasbola i/b. Mr. Shubham Gharbhudave for the
Applicants in IA No. 1107 of 2022.

Mr.Ammar Nizami i/b. Mr. M.U. Kazi for the Applicant in IA No.
2461 of 2021.

Mr. A.R.Kapadnis, APP for the Respondent -State.

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**CORAM : REVATI MOHITE DERE &
V.G.BISHT, JJ.**

DATE : 8TH JUNE, 2022

ORDER: (PER : V.G.BISHT, J.)

1. Heard learned counsel for the parties.
2. By these interim applications, the applicants seek suspension of their sentences and enlargement on bail, pending

the hearing and final disposal of their aforesaid appeals.

3. Informant Revannath Namdev Shinde runs the business of travel by name "Shlok Travelers" from his shop situated at Konje Niwas, Gala No.1, Santoshi Mata Road, Kalywan West. Ghanshyam Pathak (for short, "the deceased") used to give his Maruti Swift Dzire Car bearing registration No. MH-05/AX -9425 on rental basis. According to prosecution, on 5th June, 2012 accused, namely, Sachin @ Batatya Nichite (A-2) and Akash Gajanan Salunkhe (A-1) approached informant and sought Tavera Car for the purpose of visiting Shirdi. On 6th June, 2012, A-1 again approached informant and paid an amount of Rs. 1000/- in advance towards rent and for booking the vehicle by giving false name, address and mobile number.

4. It is the further case of prosecution that on 7th June, 2012, A-1, A-2, Sachin @ Sachya Subhash Nichite (A-3) and Dinesh Kaluram Farde (A-4) visited the shop of informant and as the said Tavera Car was not available, they took the said car of deceased to Shirdi, driven by the latter. The prosecution alleges that after having darshan at Shirdi and while returning, all the aforesaid accused committed the murder of deceased by strangulating him with the help of nylon rope and in order to

cause the evidence disappear, threw the dead body in valley and also committed theft in respect of the car of deceased. After necessary investigation, the accused came to be chargesheeted.

5. Mr. Pasbola, learned counsel for the applicants in Interim Application No. 1107 of 2022, submits that the case of prosecution is based on circumstantial evidence and except the recovery of broken number plate of the car in question allegedly at the instance of A-3 under Section 27 of the Evidence Act, there is no other evidence to connect the applicants to the alleged crime. According to learned counsel, the prosecution had failed to submit CCTV footage and the necessary CDR before the trial Court. Only evidence which the prosecution claims to have gathered was the recovery of vehicle at the instance of A-2 and the dead body at the instance of A-1.

6. The learned counsel next submits that as far as theory of last seen is concerned, that by itself does not necessarily lead to the inference that it were the applicants who committed the crime. Merely because, the applicants traveled together to Shirdi by hiring a car from informant, that cannot be a circumstance whereby the guilt of applicants can be presumed.

Moreover, the applicants were on bail during the trial and did not misuse their liberty. Thus, having regard to the material on record, the applicants deserve to be enlarged on bail during pendency of the appeal.

7. Mr. Nizami, learned counsel for the applicant in Interim Application No. 2461 of 2021, supports the submissions advanced by Mr. Pasbola, learned counsel for the applicants. According to learned counsel, except the recovery of dead body at the instance of A-1, there is nothing on record to connect the applicant to the alleged crime. Moreover, A-1 is in jail since last more than 10 years and therefore, this aspect along with material on record will certainly help A-1 to claim bail during pendency of the appeal.

8. Mr. Kapadnis, learned APP, on the other hand, vehemently opposes the submissions and invited our attention to the evidence of prosecution witnesses, namely, PW-6, PW-10 and PW-11 and would forcefully submit that there is sufficient and convincing evidence on record to connect accused with the alleged offence. Having regard to the nature of offence and the manner in which it was committed, the applicants do not deserve to be released on bail, argued learned APP.

9. First of all, we would like to go through the evidence of PW-1 informant, namely, Revannath Namdev Shinde (Exh. 63). In his substantive evidence, he has repeated the theory of prosecution i.e. circumstances under which the car was hired by the applicants. It is his specific evidence that on 7th June, 2012 i.e. the date on which they took the car along with deceased to Shirdi, at about 6.00 pm, this witness gave a phone call to deceased. The deceased, on his part, informed the informant that three persons are with him and they had returned from darshan. This piece of evidence shows that the applicants and deceased had already taken darshan at about 6.00 pm and had returned after paying obeisance to Shirdi temple.

10. It is his further evidence that at about 8.00 pm, one Ramesh Virani from the office of informant received a phone call from deceased and according to this witness, deceased informed him that they had completed the darshan and are about to return. It means by 8.00 pm, they had not returned whereas, according to version of PW-1 informant, the deceased had told him of having done darshan at 6.00 pm and they had already returned.

11. This inconsistency is pointed out by us because as per cross-examination of PW-13 investigating officer, on 7th June, 2012 at about 7.00 pm, the location of A-3 was at Sangamner Highway and at about 6.00 pm, his location and location of A-2 was at Shirdi. Thus, this piece of evidence is not in conformity with the evidence of PW-1 informant and what was told to PW-1 informant by one Ramesh Virani of his office.

12. Moreover, it is also not disputed that neither CCTV footage nor CDR was produced before the trial Court. Thus, the above noted infirmities *prima facie* go against the prosecution.

13. Since learned APP has placed reliance on PW-6, PW-10 and PW-11, it is necessary to go through their evidence as well.

14. PW-6 is a panch witness and according to him, A-3 had given disclosure statement, pursuant to which, the number plate of vehicle was recovered. Even A-4 also had given disclosure statement, pursuant to which, the chappal and identity card of deceased were recovered.

15. So essentially this witness is on the point of recovery of number plate of the vehicle belonging to deceased and as also chappal and identity card of the deceased.

16. PW-10 is a witness, who states that on 10th June, 2012, A-2 approached him and told that since he is in default of 2-3 EMI, his Swift Dzire Car may be put at his relative's house for 2-3 days. Later on, this car was seized by the police. Needless to say, the said car belonged to deceased.

17. PW-11 is a relative of PW-10 in whose house the said car was parked.

18. Therefore, except the recovery of car at the instance of A-2, recovery of broken number plate of the car at the instance of A-3, recovery of chappal and identity card at the instance of A-4 and lastly, which is apparent from the evidence of PW-13, the recovery of dead body of deceased, there is no other satisfactory evidence to complete the chain of circumstances, more so when the case of prosecution is based on circumstantial evidence.

19. It is also not disputed by the prosecution during the course of trial that A-3 and A-4 were on bail and they did not misuse their liberty in any manner or indulge in any criminal activities. Therefore, having regard to the material on record, we hold that A-3 and A-4 have made out a case for bail.

20. As far as A-1 is concerned, at whose instance the dead body was seized, admittedly, he is languishing in jail for more than 10 years. It may be that the dead body was recovered at his instance but at the same time the fact remains that the case of prosecution rests on circumstantial evidence and as pointed out by us herein above, necessary chain of circumstances *prima facie* establishing the guilt of applicants are lacking. The appeal may take its own time and therefore, in our considered view and having regard to the nature of over all material on record, we deem it fit to release A-1 on bail as well.

21. Considering the aforesaid, the applications are allowed and the applicants' sentences are suspended and they are enlarged on bail, pending the hearing and final disposal of their appeals, on the following terms and conditions :

ORDER

- i) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two local sureties in the like amount;
- ii) The applicants shall report to the trial Court, once in three months on the day/date specified by the trial Court, till their appeal is finally disposed of;

iii) The applicants shall keep the trial Court informed of their current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

22. The applications are accordingly disposed of.

23. All concerned to act on the authenticated copy of this order.

(V.G.BISHT, J.)

(REVATI MOHITE DERE, J.)

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