

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

BAIL APPLICATION NO. 3801 OF 2021

Sunil @ Bhairu Dagadu More ...Applicant
Versus
State of Maharashtra ...Respondent

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH
SUBHASH
KULKARNI
Date: 2022.07.04
17:58:03 +0530

Mr. Kuldeep S. Patil i/b Saili N. Dhuru, for the Applicant.
Mrs. M. R. Tidke, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 1st July, 2022

ORDER:-

1. The applicant – accused No.3, who is arraigned for the offences punishable under Sections 120B, 302 and 201 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), has preferred this application to enlarge him on bail.

2. The prosecution case runs as under:

(a) Ajij Saifuddin Vajir (the deceased) was the brother of accused No.1 - Rashid Saifuddin Vajir. Their father Saifuddin Saheblal Vajir had a factory at F-17, Gokul Shirgaon MIDC under the name and style of S.V. Engineering. Accused No. 1 Rashid was desirous of selling the said plot and the structure thereon to applicant Bhairu Dagadu More. Accused No. 1 Rashid had accepted part consideration from the applicant. However, the deceased was not willing to sell the said premises. Yet the

accused No. 1 had executed an instrument on a stamp paper of Rs. 100 denomination in favour of the applicant.

(b) Since the deceased did not cave in to the demand of accused No. 1 Rashid, the accused No. 1 Rashid, applicant and their associates, Javed Shaik (A-2), Sunil Shinde (A-4) and Rohit Kambale (A-5) hatched a conspiracy to eliminate the deceased. Pursuant thereto, on 4th November, 2017 the accused No. 2 Javed Shaikh, applicant and accused No. 5 Rohit accosted the deceased at Kaneri cross and forcibly made him to sit in the Maruti Swift Desire Car of the applicant. They took him to a meadow land near a quarry at Tamgaon. Accused No. 1 Rashid and accused No. 4 Sunil came thereat, on their motorcycle. Accused again asked the deceased to execute the sale-deed. As the deceased declined, the applicant and the co-accused assaulted him by fist and kick blows and accused No. 1 Rashid gave a blow by means of iron rod on the head of the deceased.

(c) After the deceased succumbed to the injuries, his body was tied to two cement poles by means of nylon rope and it was thrown in the quarry water.

(d) On 24th March, 2018 decomposed body of an unknown person was found floating in the quarry water. The said dead body was identified to be that of the deceased.

Applicant and co-accused came to be arrested. Post completion of the investigation, charge-sheet has been lodged.

(e) The applicant has preferred this application for bail on the ground that there is no material to connect the applicant with the crime. The entire case rests on circumstantial evidence. There is no complete chain of circumstances which unerringly points to the guilt of the applicant. Moreover, the applicant has been in custody since 29th March, 2018. In the intervening period, two of the co-accused namely Rohit Kamble (A-5) and Javed Shaikh (A-2) have been released on bail by orders dated 19th August, 2019 and 15th January, 2020. Thus, the applicant is also entitled to be released on the ground of parity as well.

3. I have heard Mr. Kuldeep Patil, the learned counsel for the applicant and Mrs. M.R. Tidake, the learned APP for the State-Respondent at some length. With the assistance of the learned counsels, I have perused the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

4. Mr. Kuldeep Patil, the learned counsel for the applicant, submitted that the prosecution case entirely rests on circumstantial evidence and there is no circumstance which squarely incriminates the applicant. Nothing has been recovered

pursuant to the discovery made by the applicant, which can be said to have an incriminating tendency. The prosecution case qua the applicant, according to Mr. Kuldeep Patil, is based on surmises and conjunctures. In the circumstances, since co-accused Rohit Kamble (A-5) and Javed Shaikh (A-2), against whom the prosecution has pressed into service the circumstances of recovery of weapons of offence / incriminating material, have been released on bail, the applicant also deserves the same dispensation, urged Mr. Kuldeep Patil.

5. In opposition to this, the learned APP submitted that the applicant is the direct beneficiary of the crime in question. It was the applicant in whose favour the accused No. 1 had executed an unregistered instrument to convey the property. The applicant, thus, had a strong motive to eliminate the deceased. Moreover, another offence of identical nature with a similar *modus operandi* has been registered against the applicant and the co-accused. Therefore, the applicant is not entitled to be released on bail, on merits. Nor the claim for parity is sustainable as applicant is the prime confederate in the conspiracy to liquidate the deceased.

6. I have given my anxious consideration to the aforesaid rival submissions. Evidently, the prosecution case is based on

circumstantial evidence. The body of the deceased was found after about 4 months of the deceased leaving the home on 4th November, 2017. The prosecution alleges that the accused No. 1 Rashid hatched a conspiracy to eliminate the deceased as the later did not agree to sell the premises to the applicant. In this context, the circumstance arrayed against the applicant are required to be appreciated.

7. The first circumstance arrayed against the applicant is the agreement to purchase the premises from the accused No. 1 Rashid. Recovery of a document scribed on a stamp paper of Rs. 100 denomination, whereby the said property was sought to be conveyed to the applicant, is pressed into service as the incriminating circumstance.

8. The learned APP relied upon the statement of Advocate Pratap Balasaheb Jadhav to whom the applicant and co-accused No. 1 Rashid had approached for execution of the said document. Advocate Pratap Jadhav states that on 4th May, 2017, the applicant and accused No. 1 Rashid had approached him through Mrs. Devyani Sarnobat, a bond writer. However, the document could not be executed and notarized as it did not bear the signature of the executant, Saifuddin Vazir, the father of the accused No. 1. It was informed to him that Saifuddin was unwell.

Thus, though the said document was entered in the notary register, it remained with him as nobody turned up to collect the said document.

9. There are statements of the wife and sister of the deceased to the effect that there were quarrels between deceased and accused No. 1 Rashid as the deceased did not agree to sell off the premises to the applicant. *Prima facie*, there is material to indicate that there was some transaction between accused No. 1 Rashid and the applicant in respect of the said premises.

10. In order to show that there was a conspiracy to eliminate the deceased, the prosecution relies upon the statements of Rohan Digambar Patil and Dadaso Ambadas Mane. Rohan Patil runs a hotel namely HariPrasad at Gokul Shirgaon. Rohan Patil states that since 5 to 6 months prior to the recording of his statement, Accused No. 1 Rashid and accused No.4 Sunil used to come to his hotel with the applicant Bhairu More. They used to discuss some property issue and money transactions.

11. Dadaso Mane claims to be President of Gokul Kala-krida and Sanskritik Mandal at Gokul Shirgaon, of which the applicant is a member. Dadaso Mane also stated that accused No. 1 Rashid and accused No. 4 Sunil were frequently visiting the club to meet applicant Bhairu More. On one day there was

a hot exchange of words between the applicant and accused No. 1 over property dispute. Applicant told accused No.1 Rashid to either give the property or return the amount.

12. *Prima facie*, the aforesaid statements do not appear to have incriminating tendency. The learned counsel for the applicant was justified in canvassing a submission that the aforesaid statements, *prima facie*, do not advance cause of the prosecution in establishing conspiracy to eliminate the deceased. At this stage, it is imperative to note that this Court was persuaded to release Rohit Kamble (A-5), on bail opining that the aforesaid statements do not *prima facie* constitute an incriminating circumstance. Whereas, while releasing Javed Shaikh (A-2), this Court, *inter alia*, recorded that the recovery of mobile phone handset from the said accused was a weak circumstance to connect the said accused with the crime.

13. The situation which thus obtains is that there is *prima facie* material to indicate that there was a transaction between accused No.1 Rashid and the applicant in respect of the premises, and the deceased resisted the said transaction. However, the said circumstance, on its own, *prima facie*, does not advance the cause of the prosecution to the extent desired by the prosecution. The rest of the circumstances pressed into

service against the applicant do not appear to have requisite incriminating tendency.

14. I find it rather difficult to accede to the submission of the learned APP that the case of the applicant stands on a different footing than that of the co-accused, who have been released on bail. It is pertinent to note that on the aspect of the conspiracy, the prosecution placed reliance on the very same material against the co-accused and the applicant.

15. It is pertinent to note that while releasing co-accused Rohit Kamble and Javed Shaikh, this Court has considered the objection to enlarge those accused on bail on account of the pendency of another offence wherein similar *modus operandi* was alleged and yet exercised the discretion as the circumstances pressed against those accused were found not to have the incriminating tendency.

16. The applicant has been in custody since 29th March, 2018. Further detention of the applicant does not seem warranted. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

17. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant Sunil @ Bhairu Dagadu More be released on bail in CR No.54 of 2018, registered with Gokul Shirgaon Police Station, Kolhapur, on furnishing a P. R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount to the satisfaction of the learned Sessions Judge, Kolhapur.
- (iii) The applicant shall mark his presence at the concerned Police Station on the first Saturday of every month between 10.00 am to 12.00 noon till conclusion of the trial.
- (iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial court shall not be influenced by any of observations made hereinabove.

[N. J. JAMADAR, J.]