

Rahul @ Bhawadya Machindra Jadhav	...	Applicant
versus		
State of Maharashtra	...	Respondent

Mr. Ganesh Bhujbal, for Applicant.
Mrs. J.S.Lohakare, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 28th JUNE, 2022

P.C.

1. The Applicant who is arraigned in C.R.No.187 of 2018 registered with Bhigwan Police Station for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, for having committed murder of an unknown person and caused disappearance of the evidence in order to screen himself and the co-accused from legal punishment, has preferred this Application to enlarge him on bail.

2. The prosecution case runs as under :

Kisan Gulabrao Jagtap lodged a report on 11th September, 2018 that one Tanaji Jagtap informed him on phone that on Pune Solapur Highway, at a distance of 200 meters from Highway Police Post, Dalaj No.1, a body of an unknown person was found lying. The first informant reached the spot. Naked body of a male, of about 40-45 years of age, was lying supine. Blood was oozing from the injuries on the head. There were marks of injuries on back, waist and legs. Hence, the first informant

approached the Bhigwan Police Station and lodged a report.

3. Investigation commenced. During the course of investigation, statements of witnesses were recorded. It transpired that the Applicant along with co-accused Dilip Jadhav and Gopal Jadhav committed the murder of the deceased. Two of the witnesses namely Shahid R. Shaikh and Rajendra S. Kadam stated before the police that on the night of occurrence, three persons who had come thereat on motorcycle FZS Yamaha with a number plate having inscription 'Dosti' were assaulting the deceased. Mr. Shahid Shaikh claimed that he had known two of those assailants by face. Mr. Kadam claimed that those assailants were the Applicant and the co-accused Dilip Jadhav and Gopal Jadhav. In the test identification parade, Mr. Shahid Shaikh identified the Applicant as one of those assailants.

4. The Applicant has preferred this Application for bail asserting, inter alia, that there is no material to connect the Applicant with the crime. The statement of the witnesses who claimed to have identified the Applicant as one of the assailants, were recorded belatedly. There is no discovery at the instance of the Applicant. In the circumstances, there is neither direct nor circumstantial evidence to connect the Applicant with the crime. The Applicant has been in custody since 11th September, 2018 and further detention of the Applicant is wholly unwarranted.

5. The learned Advocate for the Applicant submitted that the prosecution case qua the Applicant hinges upon the statement of the two witnesses namely Shahid

Shaikh and Rajendra Kadam. Both the witnesses ex-facie appear to be unworthy of credence. The incident occurred on 10th September, 2018. The statement of Shahid Shaikh was recorded on 13th September, 2018. Whereas, the statement of Rajendra Kadam came to be recorded on 20th December, 2018. Though, Shahid Shaikh claimed that he had known two of the assailants who were stated to be the residents of Dalaj Village, Shahid Shaikh had not named them. In this backdrop, it would be hazardous to place reliance on the statement of Mr. Shahid Shaikh.

6. The learned Advocate for the Applicant further submitted that this Court in the light of the aforesaid infirmities in the prosecution case, was persuaded to exercise the discretion in favour of the co-accused – Gopal Jadhav in BA No.51 of 20202 and release him on bail. The role attributed to the Applicant is identical to that of the Gopal Jadhav.

7. The learned APP resisted the prayer of the Applicant. It was submitted that the Applicant was duly identified in test identification parade. Thus, it cannot be said that there is no material to connect the Applicant with the crime. Moreover, one of the eye witnesses – Rajendra Kadam, has specifically named the Applicant as one of the assailants.

8. The observations in para No.5 of the order in the case of the co-accused – Gopal Jadhav, read as under :

“5. To show the complicity of the applicant in the commission of the

crime, the prosecution has relied on the statement of two witness; one is of Shahid Shaikh recorded on 13th September, 2018 and another, Rajendra Kadam on 20th December, 2018. It is Shahid's statement that, on 10th September, 2018 when he was passing through the place where the dead body was found lying, he had seen the incident, in the focus of car light, while three persons were assaulting the deceased by fist and kick-blows and one of them was assaulting by stone. Subsequently, in the test identification parade held on 4th October, 2018, Shahid Shaikh, had identified the applicant as one of those three persons. I have perused the statement of second eye-witness, Rajendra Kadam wherein, contradictions relating to incident are apparent on the face of it and therefore, it may not be appropriate to consider his statement at this stage. Thus, only the statement of Shahid Shaikh is available for consideration. It may be stated that, statement of this witness was recorded on 13th September, 2018 who had allegedly seen the applicant and the co-accused while they were assaulting the deceased and that too in car light focus and subsequently he had identified the applicant in the test identification parade after long time of his arrest. Therefore, except the statement of Shahid, which has been recorded nearly after one month from the date of the arrest of the applicant, there is no other evidence to connect the applicant to the present crime. Besides, there are no criminal antecedents against the applicant. It may also be stated that, prosecution till date, could not establish or reveal the identity of the deceased. The investigation in the case is over. That in view of the nature of accusations and the material available for consideration, in my view, a case is made out to release the applicant on bail."

9. I have carefully perused the statements of Shahid Shaikh as well as Rajendra Kadam. The role attributed to the Applicant cannot be distinguished from

the one attributed to the co-accused Gopal Jadhav. The aforesaid reasons, in my considered view, govern the case of the Applicant as well with equal force, save and except the element of antecedents of the accused which differ.

10. Even on an independent analysis, I am of the view that the statement of Rajendra Kadam which came to be recorded after more than three months of the occurrence, prima facie cannot be pressed into service to make out a case against the Applicant. The fact that Shahid Shaikh did not name the Applicant, though claimed that two of the assailants were from his village, also deserves adequate consideration. The existence of opportunity for Shahid Shaikh to witness the occurrence, which he claimed to have seen in the light emitted from the headlight of the motorcycle, is also a matter which requires examination. The Applicant has been in custody since 11th September, 2018. Further detention of the Applicant, in the light of the aforesaid nature of accusation, appears unwarranted.

11. Three cases are shown to be pending against the Applicant. In C.R.No.148 of 2014 registered with Walchandnagar Police Station, the Applicant has been arraigned for the offences punishable under Section 307 and 325 of the Indian Penal Code, 1860. Two crimes have been registered at Bhigwan Police Station i.e. C.R.No.202 of 2015 for the offence punishable under Section 307 of the Penal Code and C.R.No.96 of 2017, wherein the Applicant has been arraigned for the offences punishable under Sections 498A and 306 of the Penal Code.

12. The antecedents of the Applicant undoubtedly deserve the cognizance and put the Court on guard. However, the nature of the accusation in the case at hand and the material pressed into service against the Applicant, cannot be lost sight of. Therefore, especially having regard to the fact that the Applicant has been in custody for more than three and half years, I am inclined to exercise the discretion in favour of the Applicant. Hence, the following order :

ORDER

(i) The Applicant be released on bail in C.R.No.187 of 2018 registered with Bhigwan Police Station, on furnishing a PR bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The Applicant shall report to the Investigating Officer twice a month i.e. second and fourth Monday of each month between 11.00 a.m. to 1.00 p.m., for a period of six months or till the charge is framed, whichever is earlier.

(iii) The Applicant shall furnish the particulars of his place of residence and contact details to the Investigating Officer of the Police station concerned within seven days from his release on bail.

(iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(v) By way abundant caution, it is clarified that the observations

hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant.

The Application stands disposed.

(N.J.JAMADAR, J.)