

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

BAIL APPLICATION NO. 4293 OF 2021

Somnath Bhimrao Jalak ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr. Ashok Mundargi, Senior Advocate, i/b Mr. Shriram
Chaudhari, for the Applicant.

Ms. P. N. Dabholkar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 24th JUNE, 2022

PRONOUNCED ON: 29th JUNE, 2022

ORDER:-

1. This is an application to enlarge the applicant on bail in CR No.590 of 2021, registered with Indapur Police Station, District Pune, for the offences punishable under Sections 302, 307 and 342 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

2. The prosecution case runs as under:

Shivraj Hegde (the deceased) was a resident of Nimgaon Ketki, Taluka Indiapur. Prior to two to three years of the occurrence, the deceased had sold his agricultural land admeasuring 2 Acre 20 Are to the applicant – accused no.2. It was agreed that the deceased would repay the amount and

thereupon the applicant would execute re-conveyance in favour of the deceased. The applicant allegedly reneged from the said promise. Navnath Raut, the co-accused, also had a grudge against the deceased as the co-accused had solemnized marriage with the former wife of the deceased, after she obtained divorce from the deceased. The prosecution alleges, the relationship between the deceased and the applicant was strained on the aforesaid count.

3. On 7th June, 2021, while the deceased was filling petrol in his motorcycle at Yashraj Petrol Pump, the applicant and co-accused Navnath accosted him and on the point of a pistol forced him to board a four-wheeler. The deceased was taken to an unknown place. He was confined in a room. The applicant allegedly asserted that the deceased still owed certain amount to him.

4. On 20th June, 2021, at about 6.00 am. the applicant and co-accused Navnath brought the deceased at a place known as Junction Forest, Indapur. The applicant and co-accused poured petrol on the person of the deceased and set him on fire, and fled away. The deceased claimed to have extinguished the fire by rolling himself on the ground, and, with the assistance of the passers by, called his father

thereat. He was shifted to Civil Hospital, Solapur. A statement of the deceased was recorded by the Police Inspector, Sadar Bazar Police Station, Solapur, in the presence of the Medical Officer. Another statement of the deceased was recorded by the Magistrate. The deceased eventually succumbed to the injuries. The aforesaid statements were treated as dying declarations.

5. On the basis of the aforesaid statement, crime was registered. Investigation commenced. The applicant and co-accused came to be arrested.

6. The applicant has preferred this application for bail on the ground that the allegations of the applicant and co-accused of having abducted the deceased were found to be false by the investigation agency. In fact, a major part of the statement of the deceased was found untrue. The case set up by the prosecution on the basis of the alleged dying declaration is inherently improbable. There is no *prima facie* material to connect the applicant with the crime. Therefore, the applicant deserves to be released on bail.

7. I have heard Mr. Mundargi, the learned Senior Counsel for the applicant and Ms. Dabholkar, the learned APP for the State. I have also perused the report under Section 173 of the

Code of Criminal Procedure, 1973 and the documents annexed with it.

8. Mr. Mundargi submitted that from the own-showing of the investigating agency, more than eighty percent of the deceased's version was found untrue. The investigation revealed that the deceased was not kidnapped, as claimed. In fact, the deceased worked at different places during the said period, as a free man. The deceased had also called his cousin and got money transferred in his account through UPI. Even the deceased had attended the birthday celebration of the son of one of his friends at a place in Indapur Taluka. Lastly, there are statements of witnesses to show that the deceased was found alone, when he raised alarm after being allegedly set on fire. In this view of the matter, since the prosecution version is rendered improbable, the applicant deserves to be released on bail.

9. As against this, Ms. Dabholkar, the learned APP for the State, submitted that, at this juncture, there is adequate material to make out complicity of the applicant, *prima facie*. It was submitted that the dying declarations have been duly recorded and there is no reason to disbelieve the version of the deceased.

10. In the first dying declaration dated 20th June, 2021, which was recorded by the Police Officer, the applicant stated that the he was abducted by the applicant and co-accused Navnath Raut on 7th June, 2021 and kept in confinement till 20th June, 2021. However, the said assertion of the deceased was found to be incorrect by the investigating agency. In the intervening period, the deceased had worked at the hotel of Sarjerao Dhas at Murshedpur, Beed: the deceased had contacted his cousin Pravin Hegde in between 16th June, 2021 to 19th June, 2021 and claimed that he was working with somebody at Beed. The deceased also received money from Pravin, during the said period, through UPI. Gopal Waman Jadhav and Vandana Gopal Jadhav, the residents of Bori, Taluka Indiapur, stated before the police that on 19th June, 2021, the deceased had visited the house of Gopal Jadhav to participate in the birthday celebration of their son Kartik. The deceased had come on a motorcycle bearing registration No. MH-12/AF-5270. It would be contextually relevant to note that Mr. Deepak Hegde informed the police that on 7th June, 2021, the deceased had taken away his motorcycle on the pretext of bringing petrol from the petrol

pump to fill the same in the Scooty of the deceased and did not return.

11. On the basis of the aforesaid statements, the investigating agency drew an inference that the claim of the deceased that he was abducted on 7th June, 2021 and kept in confinement till 20th June, 2020 was unworthy of credence. Indeed, there is material on record to show that the deceased used the motorcycle as late as 19th June, 2021, the deceased was a free man during the aforesaid period and worked at various places. The location details collected by the investigating agency on the basis of the location of the mobile phone, which the deceased was carrying, revealed that the deceased was at multiple places during the said period.

12. The aforesaid material thus gives heft to the submissions on behalf of the applicant that a substantial portion of the deceased's version was not borne out by the material unearthed during the course of investigation.

13. On the core of the occurrence also, Mr. Mundargi submitted, the statements of the witnesses do not support the prosecution version. Attention of the Court was invited to the statements of three witnesses namely; Aditya Londhe, Amar Londhe and Manthan Londhe, recorded on 21st June,

2021. The abovenamed boys claimed that on 20th June, 2021 at about 6.00 am. they had been to the Junction Forest area to play cricket. While they were relieving themselves, they noticed a person wailing as he was engulfed in fire. The said person was at a distance about 100 ft. from them. Clothes, which the said person wore, had caught fire. He asked the passers by to call his father. An ambulance arrived and the said person was taken to hospital. Those boys further claimed that, at that spot, they had seen neither any other person nor any vehicle. The witnesses simply do not state about the presence of the applicant and the co-accused at the said spot.

14. Undoubtedly, dying declaration is a substantive piece of evidence. It can form the sole basis of conviction, provided it is found to be genuine and trustworthy. In the case at hand, *prima facie*, a substantial part of the assertion in the dying declaration is rendered incorrect by the material collected by the investigating agency itself. Apart from the dying declaration, there is no other material to connect the applicant with the crime. Investigation is complete for all intent and purpose. Charge-sheet has been lodged. Further detention of the applicant does not seem to be warranted.

15. The learned APP made an endeavour to press into service the antecedents of the applicant which, according to the learned APP, dis-entitle the applicant from the exercise of discretion. It is true that a couple of offences seem to have been registered against the applicant. However, the substance and nature of the accusation in the case at hand, cannot be lost sight of. I am, therefore, persuaded to exercise the discretion in favour of the applicant and release him on bail.

16. Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant - Somnath Bhimrao Jalak be released on bail 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 Additional Sessions Judge, Baramati.

(iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(vi) The applicant shall mark his presence at Indapur Police Station, once every three months, for the period of two years from today or completion of the trial, whichever is earlier.

(v) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vi) The applicant shall furnish his permanent residential address and contact details to the Investigating Officer and intimate the change, if any.

(vii) By way of abundant caution, it is clarified that the observations made 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 and the co-accused.

[N. J. JAMADAR, J.]