



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1356 OF 2023
IN
CRIMINAL APPEAL NO. 482 OF 2023

Aakash @ Akshay Sitaram Waghmare ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Abhinandan Vagyani a/w Mr. Pankaj Kandhari, for the Applicant.

Mr. K.V.Saste, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 15th SEPTEMBER, 2023

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his appeal.

3. The applicant, vide Judgment and Order dated 24th January 2023 has been convicted alongwith other co-accused as under:

— For the offence punishable under section 302 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 201 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for three years and to pay fine of Rs. 10,000/- each.

— For the offence punishable under section 364 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/- each, in default to suffer rigorous imprisonment for three months.

— For the offence punishable under section 120-B read with 34 of the Indian Penal Code, to suffer rigorous imprisonment of two years and to pay fine of Rs. 10,000/-, in default to suffer rigorous

imprisonment for three months.

— For the offence punishable under section 392 read with 34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and fine of Rs. 10,000/-, in default to suffer rigorous imprisonment for three months.

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence. According to the prosecution, the incident took place on 12th January 2011 at about 5.30 p.m. It is alleged that Nitin Padavale (deceased) returned home from his agricultural land and at about 6.30 p.m. again went out and thereafter, did not return home. Pursuant thereto, Nitin's brother - Ganesh lodged a missing complaint on 14th January 2011. It appears that on 21st January 2011, one police Patil informed the police about a dead body, lying near Waghzara, Kolhapur. The dead body was found lying in a valley at a depth of about 50 feet and was in a decomposed condition with no head attached to the body. Pursuant thereto, C.R. No. 7 of 2011

came to be registered with Shahuwadi Police Station, Kolhapur alleging offences punishable under sections 302, 201 of the Indian Penal Code. During the course of investigation, applicant and other co-accused came to be arrested. According to the prosecution, the accused no. 1-Ravi Mane had a love affair with the accused no. 7-Leena Padavale (wife of the deceased) and that accused no. 1-Ravi Mane in order to eliminate Nitin, hired accused nos. 5-Deelip Dudhale and accused no. 6- Amit Shinde to kill the deceased. It is alleged that pursuant thereto, a meeting was organized in a hotel on 12th January 2011, which was attended by accused nos. 1-Ravi Mane, 2-Vijay Shinde, 3-Kishor Mane, 5-Deelip Dudhale, 6-Amit Shinde and 9-Satish Vadar. It is the prosecution case that accused nos. 2 - Vijay Shinde, 3 - Kishor Mane, 4 - Aakash @ Akash Waghmare (applicant), 5 -Deelip Dudhale and 6 - Amit Shinde brought Nitin at Warnanagar Kodoli, Borpadale Phata, Bambawade, Malkapur Road to Waghzara jungle; and thereafter, accused nos. 2 - Vijay, 3 - Kishor, 5 - Deelip and 6 - Amit took Nitin to the said jungle; that accused nos. 2 - Vijay, 3 - Kishor and 5 - Deelip held Nitin by his leg and accused no. 6

held Nitin's head. It is alleged that accused no. 6-Amit Shinde severed Nitin's head from his body and killed him and thereafter, the body was thrown in a valley. It is further the prosecution case, that when the aforesaid accused reached Amrut Nagari Phata, post the incident, accused no.1-Ravi came alongwith accused no. 11-Manesh Kuchkoravi (on accused no. 1's motor cycle), and that accused no. 6 - Amit showed Nitin's head to accused nos. 1-Ravi. Thereafter, Nitin's head and all his articles were disposed of, by throwing the same in Warna river.

5. As noted earlier, the prosecution case rests on circumstantial evidence. Learned Counsel for the applicant submits that the applicant was working as a driver on the Qualis jeep, which was hired by the accused No.5 – Deelip Vyankatesh Dudhale at the instance of accused No.1 – Ravi on the day of the incident. He submits that the owner of the vehicle – Mr. Mehtter had given the said vehicle on hire and the applicant as a driver on the said vehicle. He submits that admittedly, the applicant was not present at the time when the conspiracy is alleged to have been hatched at Hotel

Maharaja on 12th January, 2011. He further submits that it is not the prosecution case that the applicant was present at the time when the deceased was done to death or had played any overt act in the commission of the murder of deceased – Nitin. The allegations against the applicant is that he was driving the said vehicle in which, the accused and deceased – Nitin travelled and after Nitin was killed by the other co-accused, his head was transported in the said vehicle.

6. Learned APP does not dispute the fact that the applicant was not present at the time when conspiracy was hatched to kill Nitin at Hotel Maharaja, nor was he present at the time when Nitin was killed. Learned APP also does not dispute the fact that the applicant had no motive or was known to the accused prior to the incident. It appears that the vehicle i.e. Qualis was hired from Mr. Mehtter and that the applicant (accused No.4) was deputed on the said vehicle as a driver. The vehicle is alleged to have been hired by accused No.5 – Deelip Vyankatesh Dudhale, at the instance of accused No.1 – Ravi Mane. According to the learned Counsel for the applicant, the

applicant has been falsely implicated in the case, for being present at the wrong place, at the wrong time, by virtue of his job.

7. As noted above, admittedly, the applicant was not present when the conspiracy was hatched nor was he present at the time when Nitin was killed and when his head was severed from his body. It is not the prosecution case that the applicant knew the accused prior thereto, or had any motive. The allegations as against the applicant is that the deceased and the accused were present in the Qualis which was driven by the applicant and thereafter, after killing the deceased, his head was carried by the other co-accused in the vehicle. It is not in dispute that the applicant was on bail, pending trial and that he has not abused or misused the conditions of bail.

8. Considering the aforesaid evidence on record *qua* the applicant as stated aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail on the following terms and conditions:

ORDER

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

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.