

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

CRIMINAL APPEAL NO. 229 OF 2023

Vinod Arun Zende ...Appellant
vs.
The State of Maharashtra and Anr. ...Respondents

Ms. Vrushali L. Maindad, Ms. Shaheen Kapadia a/w Sunil
Zende - Advocate for the Appellant

Mr. S. R. Agarkar - APP for the Respondent-State

Mr. Advait Bhonde – Appointed Advocate for Respondent No. 2.

API – Shankar Raut – Indapur Police Station.

Dy. Sp. Ingale – Indapur Baramati, Pune

CORAM : S. M. MODAK, J.

DATE : 30th NOVEMBER, 2023

P. C. :-

1. Heard learned Advocate for the Appellant-accused No. 4, learned APP and learned Advocate for Respondent No. 2.
2. The Appellant is behind bar since 19/08/2015. He charge-sheeted for committing the murder of one Rashmikant Rajnikant Torne, resident of Bawda, Indapur, District Pune. The said Rashmikant has not returned home after he left the house on 15/03/2015 at about 09.45 p.m.. His grandfather lodged missing complaint with Indapur Police Station on 22/03/2015.

The deceased-Rashmikanth left the house alongwith two of his friends. They had come on the motor cycle. Earlier to that there is phone call on the mobile of the deceased.

3. When this missing complaint was investigated, API Shri Nalle found that it is case of kidnapping. He registered an offence under Section 363 against unknown person. Charge-sheet was filed for the offence punishable under Sections 363, 364, 365 read with 34 of the Indian Penal Code against in all five accused persons. Out of them present Appellant is one of them. Till that time dead body was not found (page no. 224). During further investigation, the dead body was found and later on the Police have added the Sections 302, 201, 120(b), 143, 147, 148, 149 read with 34 of Indian Penal Code at page no. 222. The dead body was buried near a pond and it was exhumed on 16/03/2015.

4. The Appellant made several attempts to seek bail before the trial Court but it was unsuccessful. As provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act were invoked, he filed an appeal before this Court, however appeal was dismissed for non prosecution as per the Order dated 30/07/2019 (at page no. 422). Thereafter, also he attempted before the Sessions Court, however

unsuccessful.

5. The only material alleged against the Appellant is about use of his mobile handset for calling the deceased. It is true that now five witnesses are examined. When learned APP and learned Advocate for Respondent No. 2 pointed out that Appellant is also responsible for delay in trial by seeking several adjournments, learned Advocate for the Appellant has not argued the ground of the delay but restricted herself with the merits.

6. It is true that Division bench of this Court has granted bail to one of the co-accused Akshay @ Sonu Gautam Jagdhane. So also it is true that bail application of the co-accused Bharat Tukaram Sonawane is also rejected by the Division bench.

7. Learned APP and learned Advocate for Respondent No. 2 on the basis of the limited materials tried to oppose the bail on the ground that it is case of circumstantial evidence and if the Appellant is released on bail, there is every possibility of the tampering and whatever limited evidence available will not be adduced before the Court and it will cause serious prejudice to the prosecution in proving their case. It is their contention that in case of circumstantial evidence, every piece of circumstantial evidence is important. However, it is matter of

record that except use of mobile handset of the Appellant, there is no other material. Though the Appellant has tried to put forth his explanation that he has lost that mobile, however there are statements recorded on page no. 131 of one Santosh @ Kalya Rajendra Ghodke, Pravin Duryodhan Jadhav, on page no. 134 and Pinto @ Bharat Tukaram Sonawane, on page no. 136 which suggest that the mobile handset was handed over to them by the Appellant. However, they have returned it back to the Appellant himself.

8. It is also true that this mobile handset could not be seized though investigating agency recorded the statement of co-accused Harshal @ Aniket Rajendra Bore on 16/07/2016, at page no. 334. Though he has shown the place wherein he has thrown mobile handset of the Appellant, it could not be recovered. The mobile handset of the deceased is recovered. It is also true that there are Call details report of the mobile handset of the Appellant which suggests that there was last call made from his mobile handset to the mobile handset of the deceased. It is also true that sim card of the mobile of the Appellant stands in the name of his father.

9. As said above, except the use of the his mobile handset there are no other allegations. Prosecution does not claim that

the present Appellant is a person who has assaulted the deceased. They do not claim that the present Appellant is one of two persons alongwith whom deceased has left the house.

10. Considering these materials, I do not think that his further detention is warranted. There are orders of rejection annexed to the application passed by the trial Court. Once the earlier bail was rejected on merits by the trial court, subsequent orders of the rejection are there in view of absence of change in circumstances. Even though the Appellant will be granted bail, the material against him can be proved through evidence because ultimately it is evidence of the call details report and which can be proved by examining the Nodal Officer.

11. All these materials were not considered by the trial Court. The impugned order deserves to be set aside subject to the conditions, the Appellant can be granted bail. Hence the Order:-

ORDER

- (i) Appeal is allowed.
- (ii) The Order dated 16/09/2022 is set aside.
- (iii) The Appellant be released on bail on furnishing Personal Bond and Surety bond in sum of Rs. 50,000/-.

(iv) He should not enter the Pune district during the pendency of the trial except for attending the court proceeding.

(v) Appellant is directed to furnish his residential address to the Indapur Police Station and inform change in the address, if any.

(vi) Appellant shall not to threaten the prosecution witnesses.

[S. M. MODAK, J.]