

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

BAIL APPLICATION NO.576 OF 2022

Mahesh Prabhakar Bhoir ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

BAIL APPLICATION NO.1539 OF 2022

Sachin Diwakar Pawar ...Applicant

Versus

The State of Maharashtra ...Respondent

...

Mr. Rahul Thakur, Ms Sushmita Tandel, Mr. Sanket Thakur, Mr. Ganesh Gupta and Mr. Sahil Gorpade for the Applicant in BA/576/2022.

Mr. Amit Munde for the Applicant in BA/1539/2022

Mr. Anand Wagaralkar h/f Mr. Umeshchandra Yadav, Special PP for the Respondent -State.

Ms A.A. Takalkar, APP for Respondent -State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th JUNE, 2023.

P.C.:-

1. The Applicants herein, who are facing trial in Sessions Case No.382 of 2019 pending on the file of learned Sessions Judge, Greater Bombay, have filed these Applications under section 439 of Cr.P.C. The said case arises from Crime No.571 of 2018 registered with Pant Nagar Police Station, Ghatkopar (East) for the offences punishable under

Sections 201, 120B, 302, 363, 364, 365, 394 r/w 34 of the Indian Penal Code (IPC).

2. Learned counsel for the Applicants and learned Special PP for the Respondent-State have made oral submissions and have also filed written notes. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The case of the prosecution reveals that on 28/11/2018, the deceased-Rajeshwar Udani had not returned home from the office. His son – Raunak Udani had tried to contact him but his phone was switched off. Hence, he lodged a missing report on 29/11/2018. On 13/12/2018, a dead body was found near Dehrang Dam, Panvel and an Accidental Death Case No.61 of 2018 was registered at Panvel Taluka Police Station. Subsequently, Raunak Udani identified the corpse as that of Rajeshwar Udani. The valuables of the deceased were found to be missing. The post mortem revealed that there was a '*nasal bone fracture of hyoid bone suggestive of death due to asphyxia by smothering with manual strangulation (unnatural)*'. Hence, crime came to be registered for offences under Sections 302, 364, 394 and 201 of the Indian Penal Code.

3. The case of the prosecution is that the Applicant-Sachin Pawar (A1) and the deceased were known to each other and would often visit dance bars. The deceased was flirting with and was trying to establish relationship with the live-in partner of the Applicant-Sachin Pawar. Hence, this Applicant with the aid of the other accused hatched a criminal conspiracy to eliminate the deceased -Rajeshwar Udani.

4. Since the charge is of conspiracy, which is generally hatched in secrecy, the case of the prosecution rests mainly on circumstantial evidence. One of the circumstances is that the Applicant -Sachin Pawar through one of the bar dancers-Shaista (Accused No.6) roped in accused No.7-Nikhat to honey trap the deceased. The material on record also prima facie reveals that the Applicant (A1) had forwarded photographs of A6 and A7 to the co-accused(A2), who in turn had forwarded the photographs to A3 and A4 to enable them to identify the Accused Nos.6 and 7. There is whatsapp chat between the Applicant and the co-accused stating that 'plan set ahe' (the plan is set).

5. The statement of Vishal Parte prima facie reveals that at the instance of the Applicant -Sachin (A1) he had procured two sim cards in his name, with mobile Nos.8928487479 and 8928485813 and handed over the same to the Applicant (A1). There is prima facie

material to show that the accused No.7-Nikhat had called the deceased from mobile phone No.8928487479. She had also sent SMS to the deceased from the said number, which was procured by Applicant A1 through Vishal Parte. It may be noted that this Court (Coram : Sandeep K. Shinde, J.) has dismissed the bail application No.2347 of 2019 filed by accused No.7- Nikhat Khan holding that her complicity in the subject crime is prima facie implicit.

6. It is the case of the prosecution that on 28/11/2018, prior to the implementation of the plan, the Applicant Sachin Pawar (A1) and the co-accused Dinesh Pawar (A2) had carried out recce of the place at Navi Mumbai. This is prima facie established by their CDR location. There is also prima facie material in the form of CDR record to indicate that the Applicant (A1) had contacted accused No.6 on 28/11/2018 at 17.38 hours and 17.51 hours. The tower location of the mobile number of the Applicant (A1) and (A6) is shown at Adarsh Nagar, Jogeshwari link road. The CCTV Footage also prima facie shows the presence of the Applicant (A1) alongwith the accused No.7 at Cafe Coffee Day, Andheri on 28/11/2018.

7. In furtherance of execution of plan, the Applicant (A1) arranged for i10 Car belonging to Swati Desai. The statement of Swati

Desai prima facie reveals that the Applicant (A1) was known to her. That on 28/11/2018 at about 5.00 p.m., the Applicant (A1) had taken her i10 car bearing No.MH02 DW 0628.

8. The statement of Sohail Golandaz prima facie reveals that at the instance of the accused No.2, he had brought the Applicant-Mahesh Bhoir (A4) and the other co-accused to Sai Prakash Banquet Hall, Vikhroli. This witness states that he had seen the Applicant - Sachin and the accused No.2 sitting in i10 car and he had also seen the Applicant-Mahesh and another girl between 18 to 20 years sitting on the rear seat of the said car. His statement further indicates that he had seen the Applicant No.1 affixing a new number plate with number MH03 AP 4811 on the old number plate of i10 car. The CCTV Footage prima facie shows presence of this witness and the Applicant No.4 and accused Nos.2 and 3 near Prakash Banquet Hall.

9. The statements of Sohail Golandaz and Linous indicate that at the instance of accused No.2-Dinesh they had brought a birthday cake, and that the accused No.2 had handed over the said cake to the Applicant-Mahesh. Accused No.2-Dinesh told them that the accused No.5-Babu was a new driver and did not know the route. They were

told to proceed towards Cashurina Society near Ghatkopar Bus Depot. The i10 car followed their motorcycle. The Applicant-Sachin got down from i10 car and entered in a Scoda car and proceeded towards LBS road. They have stated that the i10 car proceeded further, took a turn at Eastern Express High Way and stopped near the bridge. One person got down from a red car and sat next to one girl on the rear seat of the i10 car, which proceeded towards Ghansoli. At about 10.00 p.m. the driver of the i10 car applied sudden break and that they saw the Applicant -Mahesh and the other co-accused entering the i10 car. CCTV Footage also shows the i10 car at Airoli Toll Naka.

10. The statement of Vijay Misal, the driver of the deceased prima facie reveals that on 28/11/2018 after closing the office at about 8.15 p.m, the deceased told him to take the car towards Ghatkopar Depot. At about 8.40 p.m., the deceased told him to stop the car near Vikhroli Traffic Chowki. He had seen the deceased entering a white i10 car, which proceeded towards Thane.

11. The CDR records prima facie reveal that the Applicants and the co-accused were constantly in touch with each other. The material on record also reveals that the Applicant -Sachin (A1) was also in

constant touch with the witness – Sohail Golandaz.

12. The statements of Samiksha Chavan, Pankaj Patil, Ruturaj and Babu Jain prima facie prove presence of accused Nos.2 and 7 at Murud, Raigad from 29/11/2018 1.30 hours till 7.30 p.m. During their stay at Murud, they had stayed in the house of Pandurang Patil, the father of Samiksha Chavan, a close friend of accused No.2. They had also purchased clothes from the shop of Babu Jain. The i10 car was cleaned by Pankaj Patil and Ruturaj, the cousin of Samiksha and the accused No.2 had paid them Rs.500/-. These two witnesses had seen pieces of cake fallen in the said car and had noticed that the rear number plate of the car was partly broken and the front number plate was missing.

13. A bunch of keys of the deceased was recovered at the instance of A1 under Section 27 of the Evidence Act. The i10 car was seized and the DNA report confirms that the strand of hair recovered from the car matches with the hair of the deceased. A pair of black colour hand gloves was recovered at the instance of Applicant-Mahesh (A4). As per the forensic report, the soil found on the pair of gloves matches with the soil sample from the place where the dead body was

found.

14. All the above facts and circumstances prima facie prove the involvement of the Applicants in commission of the crime. Suffice it to say that while considering the application for bail, the Court is not required to appreciate or analyze the evidence and delve deep into the merits of the matter. Furthermore, as it has been held by the Hon'ble Supreme Court the bail application is not to be heard like an appeal.

15. Having regard to the totality of the facts and circumstances of the case and for the reasons stated above, in my considered view, the material on record, prima facie indicates that the Applicants are involved in commission of the serious offence. The gravity of the allegations would not justify grant of bail. Hence, the Applications are dismissed.

16. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of refusal to grant bail and the same shall not in any way influence the trial in other proceedings.

(SMT. ANUJA PRABHUDESSAI, J.)