

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

BAIL APPLICATION NO. 2397 OF 2021

Ganesh Ashok Nagavkar

..Applicant

v/s.

The State of Maharashtra .

..Respondent

Mr. Ashok Pandira, Advocate appointed for the Applicant.

Mr. S.V.Gavand, APP for the State.

Mr. Tausif Sayyed from Sawantwadi P. Stn.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 13th APRIL, 2023.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Sessions Case No. 11 of 2019 pending on the file of the Id. Addl Sessions Judge, Sindhudurg at Oros. The said case arises from C.R. No. 183 of 2018 registered at Sawantwadi Police Station for offences under Section 302, 396, 201, 120B, 404 and 411 of the Indian Penal Code.

2. Heard learned Counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsels for the respective

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parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Abdul Rauf Esak Mulla, the owner of truck bearing No. KA-22/B-8526. One Anwar Hussein Md. Yusuf Akhtar and Tausif Mehboob Hinnigiri were employed by him as drivers and the deceased Rajnikant Mane was working on the said truck as a cleaner. The first information report reveals that on 12.10.2018 the said truck had gone to Jawahar Shetkari Sanghatana for loading sugar. The Driver- Anwar and the deceased Rajnikant Mane were on duty on the said truck. On 15.10.2018, deceased Rajnikant Mane informed the first informant that sugar was loaded in the truck. He also told him that driver Anwar had reported ill and that driver Tausif would join near Nipani Highway. Said Rajnikant Mane told him that he would drive the vehicle and according he left the sugar factory at about 2.30 p.m. The first informant was in constant touch with deceased Rajnikant Mane. At about 6.35 p.m. the deceased told him that he was at Nipani Indian Oil Petrol Pump. The first informant spoke to Ingle from the phone of the deceased. Said Ingle had told the first informant that two other persons, who claimed to be passengers were in the truck. He states that about an

hour later when he tried to contact the deceased, his phone was switched off. Someone picked up the phone at about 9.00 p.m., but disconnected the phone immediately, and thereafter the phone was once again switched off. He was unable to trace the truck and the deceased Mane. He has stated that on 17.10.2018 he received phone from Amboli Police, inquiring whether he was the owner of truck No. KA-22 B 8526. He went to the Police station, and identified the truck. There was no sugar in the truck. He saw the dead body of Rajnikant Mane with a cloth tied around his neck and injuries on his head. He therefore lodged the FIR against unknown person for committing murder of Rajnikant Mane, and committing theft of 25 tons sugar from the truck.

4. The statement of victim Anil Bhopale reveals that in the Month of June 2018, Accused No.1 had come to Hutatma Garden with Accused Nos.4 and 5. The Accused Nos.4 and 5 had stated that they were in jail for theft of a vehicle. On 12.10.2018, the present Applicant and Accused Nos.3 and 6 went to Hutatma Garden. Accused No.1 disclosed his plan to go to the sugar factory and commit murder of the driver of the truck and take away the truck with sugar. He has stated that on 15.10.2018, the Accused

No.1 had met the Applicant and the Accused No.3 and told them to accompany him. He refused to accompany the Applicant and the other accused. He claims that on 16.10.2018 Accused No.1 came to his house and he left after some while. On 17.10.2018 he told him they they had committed theft of the truck and that the work was done.

5. The records reveal that the mobile phone of the deceased was put on surveillance. The location of the mobile phone was traced. The police recovered the mobile phone of the deceased from the witness Vaibhav. The statement of Vaibhav reveals that the Applicant herein had given the said phone to him. Said Vaibhav has further stated that about two days thereafter the Applicant told him that he had seen the police vehicle going towards his house, and told him that in case they question him about the phone, he should tell the police that he had found the phone in the garden.

6. The statement of Sanjay Kumar Chavan also prima facie reveals that on 16.10.2018 about 3.00 a.m. the accused No.1, along with three others had come to his hotel at Amboli, with green colour truck, and that they were talking about committing theft of the

vehicle and committing murder of the driver and taking away the belongings. This witness has identified the present Applicant in the identification parade, as one of the persons who had accompanied the accused No.1 to his hotel on 16.10.2018.

7. The material on record prima facie discloses the involvement of the Applicant in commission of the crime, which is of serious nature. Considering the gravity of the crime, I am not inclined to exercise discretion under Section 439 of Cr.P.C. Application is dismissed.

(ANUJA PRABHUDESSAI, J.)