

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

BAIL APPLICATION NO. 2832 OF 2022

Sumit Vasant Patil	...Applicant
vs.	
The State of Maharashtra	...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 1368 OF 2023
IN
BAIL APPLICATION NO. 2832 OF 2022**

Chandrabai Dattu Chaudhary	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Vinod Kashid - Advocate for the Applicant in BA 2832 of 2022
Mr. Pratap Nimbalkar for the Applicant in IA 1368 of 2023
Mr. S. R. Agarkar – APP for the Respondent-State
API Popat Nale – AEC Crime Branch, Thane

CORAM : S. M. MODAK, J.

DATE : 28th JULY, 2023

P. C. :-

1. I have already heard learned Advocate Shri Kashid for the Applicant-Accused No. 2-Sumit and learned Advocate Shri Nimbalkar for the first informant and learned APP.
2. The summary filed by both of them is already taken on record. Today, I have again heard both of them. Interim Application

in bail filed by the learned Advocate Shri Nimbalkar.

3. Initially, an offence was investigated by Tilak Nagar Police Station, Dombivali. But later on, on the complaint of the first informant it is transferred to the Crime branch. The offence is under Section 302, 120-B read with 34 of the Indian Penal Code and under Section 4 read with 25 of the Arms Act and under Section 37(1) read with 135 of the Maharashtra Police Act.

4. It is true that we come across the applications wherein the first informant engages the services of the Advocates. However rarely we come across the applications, wherein there are rival submission made on behalf of the first informant to the submissions made by the accused that is to say if the accused points out certain lacunae in the materials collected, at the same time, the first informant points out the another material so as to wash out the lacunae pointed out on behalf of the Applicant-accused.

5. It is no doubt true that at the time hearing of the bail application, we have to see the materials as it stands. In this case the first informant was having grievance that the earlier investigating officer has not carried out investigation properly and even certain materials are not submitted alongwith charge-sheet.

6. There is statement of one Siddhesh Chaudhari recorded on 13/12/2021 by Crime branch. He has narrated all the details about request to transfer the investigation and his further submission recorded by Crime branch. The deceased-Mukund Alias Bhanudas Chaudhari was his uncle. He was murdered on 23/10/2021 and his dead body was found near Nala at Village Khambalpada, Dombivali East. The spot panchnama/Crime detail form was prepared on 24/10/2021 at page no. 101. The present Applicant himself has lodged the complaint on 24/10/2021 under Section 302 of the Indian Penal Code against accused-Hitesh Alias Kalia. Hitesh confessed about the crime. The said Hitesh used to work with mother of the present Applicant in fish selling business. Complainant has lodged the complaint that said Kalia has murdered the deceased-Bhanudas. Subsequently, during investigation it is disclosed that the present Applicant is also responsible for the death.

Motive

7. The deceased-Bhanudas was unmarried. There is property dispute in between the deceased-Bhanudas on one hand and sons of Vasant Patil, who is father of the present Applicant. The Amit-brother of the present Applicant and present Applicant have

constructed the chawl on joint land without permission of the deceased-Bhanudas and his mother-Sherubai. This property dispute is one of the motive for eliminating the deceased.

8. Whereas it is contended on behalf of the Applicant that other family members were pressurizing his father-Vasant Patil to settle the dispute and that is why he is falsely implicated. There are statements recorded by family members by the Tilak Nagar Police Station as well as Crime branch.

9. The prosecution case is that the present Applicant and his brother hired the service of the Mother's employee Kalia for eliminating the deceased. It is not doubt true that case is based on circumstantial evidence. There is no statement of the witness who has actually seen the assault on the deceased due to which he expired.

10. It is true that in a case of circumstantial evidence, the link has to established which conclusively proves the involvement of the accused. This is to be verified at the time of the trial. At the hearing of the bail application, we have to verify whether there are materials which show the involvement of the Applicant and which *prima-facie* suggest that the accused is responsible.

11. Learned APP and learned Advocate Shri Nimbalkar have pointed out the following materials to show the involvement of the present Applicant:-

- (i) The F.I.R. lodged by the Applicant himself putting the blame on employee-Kalia. This conduct is relied upon by the Applicant to show his bonafide.

Whereas it is relied upon by the prosecution to show that the intentionally, he has given false information to the Police thereby indirectly exonerating him.

- (ii) The post-mortem report certifies the cause of death was due to Haemorrhagic shock due to cut throat injury with fracture skull, at page no. 89.
- (iii) The recovery of the weapons at the instance of the accused no. 1. The statement is dated 24/10/2021 at page no. 113. Crime detail form is at page no. 101.
- (iv) The panchnama about inspection of the mobile. It belongs to the present Applicant. It was seized on 25/10/2021, at page no. 122. It was carried at 17.25 to 19.10 hours. Whereas the Applicant is arrested at 21.30 hours. This mobile contains recording and conversation between him and his mother from 23/10/2021 from 20.06.32 hours. Wherein the caller has asked the present Applicant not to telephone her as the work is accomplished. Caller has again told the present Applicant, I will not aware as what sort of work is there.

Furthermore, the Applicant has told mother that he has killed with the help of the sword.

- (v) The memorandum statement of the accused no. 1, wherein he has produced the scooty used by him and clothes wore by the deceased (at page no. 125). The scooty is owned by one Sunil Hira Chini Rathod, at page no. 135.
- (vi) There is statement of Sunil Rathod on 08/01/2022 at page no. 136 who states that the present Applicant was using that scooty but it was purchased in his name.
- (vii) Mobile seizure panchnama dated 26/10/2021, at page no. 138 belonging to the present Applicant. Wherein there was recording in between the Applicant his brother Amit and his mother. It is of dated 23/10/2022 at about 21.20 hours duration of 225 seconds. Wherein the present Applicant told the mother that assault is with the help of the sword.
- (viii) The voice samples taken of arrested accused-Hitesh and present Applicant on page no. 142.
- (ix) The mobile seizure panchnama belonging to the present Applicant on 27/10/2021 belonging to Samsung Company.
- (x) Forwarding letters sent to the Chemical Analyser about seized muddemal and authority letter sent to the Chemical Analyser thereby forwarding the mobile and voice samples.

12. On the point of motive and last seen, the prosecution relied upon the following documents:-

- (a) This statement given by witness-PSI Ajinkya Dhonde, dated 25/10/2021, at page no. 168.

Following are the details :-

- (i) He is working as PSI. He was on patrolling duty of 23/10/2021 at about 10.30 p.m.. He was asked to visit the spot, in front of Gavdevi temple at village Kachore as the present Applicant and his brother-Amit have gone to the Police Station thereby complaining about the murder of the Bhanudas committed by accused no. 1.
- (ii) When these witnesses went to the spot at that time the present Applicant was also there. He called accused no. 1.
- (iii) At that time, the accused no. 1 has confessed about the murdering of the deceased.
- (iv) The motive told by him is obstruction caused by the deceased to accused no. 1 while joining the fish selling business.
- (v) Thereafter the accused no. 1 took all of them near Nala in that agricultural field behind the house of the Santosh Khade. The body is found.
- (vi) There is emphasis on this statement for the reason that the present Applicant called the accused no. 1

and he has confessed about committing murder.

- (b) Statement of one Aanant Aatmaram Pawar, dated 29/10/2021, at page no. 174. Wherein he has seen the deceased and accused no. 1 chit-chatting with each other on 23/10/2021 after 8 p.m.. Witness- Aanant had seen them.
- (c) The statement of Vasant Dattu Choudhari, dated 03/11/2021, at page no. 177. He is father of the present Applicant. He has said about smooth partition of the land amongst them. But dispute remained about partition of 19R land belonging to the share of his father Datta and the deceased bet these witness also.
- (d) The statement of one Shobha Ramesh Gaikar, dated 05/11/2021, at page no. 178, who is sister of the deceased. On 23/10/2021, the deceased left the house at about 7 p.m. after dinner and he has not returned home as told to the witness by her sister Chandra at 10.45 p.m..
- (e) Apart from this there is statement of witness Shobha that is dated 05/11/2021 but the Crime branch officer signed it on 06/12/2021.

Following facts revealed :-

- (i) On 23/10/2021 in the afternoon at 1.30 p.m., she saw the discussion in between Lata who is mother of the present Applicant and her employee-accused no. 1. She has reminded the accused no. 1 to keep proper vision.
- (ii) Furthermore, she has heard Lata saying to break into

pieces.

(iii) The witness-Shobha has further stated that on 23/10/2021 at about 10.45 p.m., the deceased has not returned home and she finds that the dead body of her brother was lying near Nala.

(iv) The Applicant and his brother and his mother have not come there but they realized that they have ran away from the house.

- (f) The contention of the Applicant is that there are lots of variance in between the statement of this witness recorded on 05/11/2021 by Tilak Nagar Police Station and the statement recorded by Crime branch. So to say, the evening incident on 23/10/2021 were not stated by this witness.
- (g) There is house search panchnama on page no. 185 dated 27/10/2021 of the present Applicant. Certain clothes were found except that nothing incriminating was found.
- (h) There is statement of witness Indubai, dated 08/11/2021, at page no. 187. She has stated that the present Applicant and Amit confessed to her that they intend to murder the deceased on one day and they used to beat the deceased whenever certain settlement meetings were held.
- (i) There are statement on the similar lines recorded on 08/11/2021 of Aanant Chaudhari and dated 25/10/2021 of Chandra Chaudhari, on page nos. 188 and 189.
- (j) In the statement dated 25/10/2021 by Chandra

Chaudhari page no. 189, she has narrated about the dispute in between the Applicant, his father and the deceased and on one occasion Amit-the brother of this accused has tried to assault the deceased with the help of instrument made of stone.

- (k) There is statement of this witness-Chandra Choudhari dated 06/12/2021, at page no. 53 recorded by Crime branch. Mr. Kashid submits that the first statement dated 05/11/2021 even was recorded after gap of more than 15 days.

13. As against this learned Advocate Shri Kashid made following submissions:-

- a) The conduct of the present Applicant in informing the Police that in fact it is accused no. 1 who has committed the murder. His conduct of calling accused no. 1, when the Police about to visit the spot.
- b) There are no eye witnesses.
- c) The statements of the witnesses who are close relatives of the deceased are recorded after gap of 15 days.
- d) In fact the accused no. 1 has confessed that he has committed the murder. This was to API Vaibhav Chumbale, on page no. 166.

Conclusion

14. As said above, there is no eye witnesses. Furthermore at the instance of the present Applicant, none of the weapon is seized. What is seized is mobile handset. Wherein there is recording in between the present Applicant and his mother and present Applicant and his brother and mother. Furthermore, there are statement of the witnesses as referred above who has stated about the dispute in between the present Applicant, his brother and father on one hand and deceased on the other hand.

15. No doubt there is circumstance of given extra-judicial confession by the accused no. 1. It was given in the presence of the PSI Ajinkya Dhonde on the spot. No doubt there is circumstance of the last seen in between the deceased and the accused no. 1 on 23/10/2021 after 8.00 p.m. as stated by the witness Aanant Pawar page no. 174. Whereas there is more circumstance of the last seen stated by Chandra Choudhari, at page no. 53, wherein she had seen the deceased interacting with this Applicant and his brother-Amit after 08.00 p.m. on 23/10/2021. After all the allegation against the present Applicant is hatching conspiracy alongwith assailant-accused no. 1. So involvement of the present Applicant needs to be looked

into that angle.

16. If looked from that angle, I find that there are circumstances, so to say about interaction with mother thereby suggesting about killing by sword. There is circumstance showing the motive for elimination the deceased as stated by the witness. I think that at this stage these materials are sufficient to warrant his detention. Further dissection of the evidence cannot be done at this stage. So I do not think case for bail is made out. So bail application is rejected and accordingly, interim application is disposed of.

[S. M. MODAK, J.]