

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

***INTERIM APPLICATION NO. 3830 OF 2023
IN
CRIMINAL APPEAL NO. 1163 OF 2023***

Chintan Vidyasagar Upadhyay ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Amit Desai, Senior Advocate a/w Mr. Shardul Singh, Mr. Gopalkrishna Shenoy, Mr. Bharat Manghani, Ms. Prerna Gandhi, Ms. Sayali Sawant and Mr. Anish Shahapurkar i/b Mr. Bharat Manghani for the Applicant

Mr. J. P.Yagnik, Addl. PP for the Respondent-State

Mr. Anil G. Lalla a/w Mr. Aryan Kotwal i/b Lalla & Lalla for the Intervenor.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
MONDAY, 11th DECEMBER 2023**

ORDER (Per Revati Mohite Dere, J.) :

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 aforesaid appeal.

3 The applicant, vide judgment and order dated 10th October 2023 passed by the learned Sessions Judge, in Sessions Case No. 136/2016, has been convicted and sentenced alongwith other co-accused as under:

- for the offence punishable under Section 120B r/w Section 109 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.25,000/-, in default of payment of fine, to undergo simple imprisonment for 6 month.

The other co-accused were in addition to the aforesaid also convicted and sentenced for other offences.

4 Mr. Desai, learned senior counsel for the applicant submitted that the applicant has been convicted only on the basis of the confession recorded of co-accused Pradeep Rajbhar under Section 164 of the Cr.P.C by PW 45-Prasad Kulkarni, which confession has been retracted. He submitted that apart from the said evidence, there is no other material to connect the applicant with the alleged offence. He submitted that the applicant was granted bail by the Apex Court, pending trial, having regard to his incarceration for 5 years.

5 Mr. Yagnik, learned Addl. P.P. as well as Mr. Lalla, learned counsel for the intervener vehemently opposed the application. They submitted that co-accused-Pradeep had not retracted his confession. They submitted that the confession made by the co-accused Pradeep to PW 45-Prasad Kulkarni has been duly proved by the prosecution and that the aforesaid confession has been duly corroborated by other circumstances on record. They submitted that the bail granted by the Apex Court was not

on merits, but due to long incarceration for about 5 years and since about 12 witnesses were yet left to be examined. They submitted that now there is ample evidence before the Court, pointing to the complicity of the applicant and as such, the applicant's bail application be rejected.

6 Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence. The circumstances are: confession made by Pradeep (co-accused No.2) under Section 164 Cr.P.C to PW 45-Prasad Kulkarni. There is no document placed on record by the learned senior counsel for the applicant to show that the confession so made by Pradeep was "retracted" by him. The application made by Pradeep cannot be said to be an application, filed for retraction of confession made by him to the Magistrate. We have perused the confession made by Pradeep, which is proved by PW 45-Prasad Kulkarni. The confession made by co-accused No.2-Pradeep is duly corroborated by the circumstantial evidence on record i.e. the visit of the co-accused

to Jaipur to applicant's father's house to meet the applicant; their stay in a hotel; and call detail records (CDR) of the applicant and Vidyadhar. Although, it is alleged that Vidyadhar (absconding accused) was doing fabrication work for the applicant and his wife (deceased-Hema), the telephone calls exchanged between applicant and Vidyadhar corroborate the confession made by Pradeep (co-accused No.2). In addition, there is CCTV footage relied upon by the prosecution i.e. of 11th December 2015, showing deceased-Hema and Advocate Bhambani entering the premises in question behind co-accused Vidyadhar (absconding) at around 8:55 p.m and CCTV footage of 12th December 2015, showing co-accused Pradeep Rajbhar, Vidyadhar Rajbhar and Vijay Rajbhar loading two big cardboard boxes in a tempo at 12:15 a.m. The dead bodies were found in the cardboard boxes, which were dumped in the Nullah. There is recovery of Hema's ring at the instance of co-accused Shivkumar Rajbhar, which has been identified by PW 39, brother of the deceased-Hema. The prosecution has examined PW 23-Mangesh Raut to prove the

CCTV footage. There is also discovery of a tempo in which the dead bodies were carried, at the instance of Vijay Rajbhar and Honda City Car belonging to deceased-Haresh Bhambani. In the forensic examination, two sim-cards were found in the glove compartment of the Honda City Car, one long hair behind the driver's seat; another long hair behind the left seat of the driver's seat; and the third long hair in the middle of the back seat. The CA report/DNA reveals that the hair was of deceased-Hema. It is in this Honda City Car, belonging to deceased-Advocate Bhambani; that deceased Hema and Haresh Bhambani travelled to the spot of the incident i.e. to Room No.111, Durga Mata Shejar Samiti Chawl, Behind Noorani Masjid, Lalji Pada, Kandivali (West), Mumbai. The other circumstance is the evidence of PW 24-Ramesh Soni and PW 30-Mohd. Shaikh, Ola and Uber drivers. They have been examined by the prosecution to show that the applicant was picked up from Phoenix, Lower Parel and dropped at Chembur (where the applicant met Vidyadhar and Pradeep and told Vidyadhar the task to be done) and then from Chembur to

the Domestic Airport. Mr. Desai submitted that the applicant does not dispute his travel to the said places, however, it was not in the Ola/Uber vehicles of the said witnesses, but in some other taxi and that the applicant had gone to meet his friend at Chembur and not Vidyadhar as alleged by the prosecution. It is submitted that in these circumstances, the applicant's CDR at Chembur on 8th December 2015 and that the allegation that the applicant had gone to meet Vidyadhar cannot be said to be incriminating. There is no cross-examination of the said witnesses that the applicant did not travel in the said vehicles, as alleged by the prosecution. Although in his 313, the applicant has stated that he did travel from Phoenix to Chembur and from Chembur to the Airport, there is nothing in his 313 statement, to show that the vehicles in which he travelled, were not the vehicles as alleged by the prosecution. We have reproduced few amongst several other circumstances. The aforesaid circumstances corroborate the confessional statement of co-accused-Pradeep which is found to be true and voluntary. It is also pertinent to note that bail

granted by the Apex Court was not on merits but on account of long incarceration of the applicant i.e. 5 years and since about 12 witnesses were yet to be examined.

7 Considering the overall evidence on record, this is not a fit case to enlarge the applicant on bail. Hence, application is rejected.

8 Preparation of paper-book is expedited. As soon as the paper-book is prepared, liberty to apply for fixing date of hearing of the appeal.

9 Application is accordingly disposed of in the aforesaid terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.