

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1137 OF 2023

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Dharmendrakumar @ Vakil

Sampatram Gautam

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Umesh Iyer a/w. Mr. Ishan Jangam and Mr. Devendra Avhad, for the Applicant.

Mr. Tanveer Khan, APP, for the Respondent/State.

Mr. Sachin Patre, API, Mahatma Phule Chowk police station.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 20, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No. 555 of 2021 registered with Mahatma Phule police station for the offences punishable under sections 120-B, 302, 364, 379, 201 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.
3. Pramodkumar Gupta had placed his Ertiga car bearing No. MH-43-BP-9946 with UBER Co., for rental purpose. Amrut Gavde (the deceased) was driving the said car. On 1st August, 2021, the deceased informed the owner of the car that he had a call for Dhule. After the deceased left for Dhule, the location of the car could not be traced in GPS nor the deceased could be contacted on phone. The owner of the car thus lodged a missing report.

4. During the course of investigation, it transpired on 1st August, 2021 at about 11 pm the said car had passed Shivaji Chowk, Kalyan (w). Investigation further revealed that the applicant and the co-accused had hired the car and killed the deceased in the Kasara ghat and fled away with the car. Eventually, the car was recovered from accused No. 6. The applicant and the co-accused came to be arrested.

5. During the course of investigation, the co-accused Rahulkumar Gautam made a disclosure statement and voluntarily showed the place where the knife, with which the deceased was killed, and the blood stained clothes of the co-accused Bachai @ Ghanshyam Gautam were concealed. In the said disclosure statement, the applicant was named as an associate of Rahulkumar Gautam, who stole the car as Harishchandra Gautam, accused No. 6 had promised to pay him a sum of Rs. 2 lakhs for an Ertiga car.

6. Mr. Iyer, the learned counsel for the applicant, submitted that the applicant has been in custody for more than two and half years. The charge has yet not been framed. Apart from the disclosure statement made by the co-accused Rahulkumar Gutam, there is no other material to connect the applicant with the crime. It was

further submitted that even if said disclosure statement is taken in to account, the role attributed to the applicant is that of holding the deceased when the co-accused allegedly assaulted the deceased by means of knife.

7. In opposition to this, Mr. Khan, learned APP, submitted that the applicant shared a common intention to commit the murder of the driver. There is CCTV footage which indicates that the deceased was carrying five passengers in the said car. Having regard to the gravity of the offences and the fact that the applicant is resident of Uttar Pradesh, the applicant may not be released on bail.

8. Evidently, there is no eye witness to the occurrence. The entire case rests on circumstantial evidence. The circumstances pressed into service against the applicant are the CCTV footages and the discovery made by the co-accused Rahulkumar Gautam. It is trite that the disclosure statement made by accused is not a substantive piece of evidence and not admissible against the non-maker co-accused. In the instant case, the identity of, and the role attributed to, the applicant in the disclosure statement can not be said to be distinctly related to the fact of thereby discovered. Therefore, the admissibility of the said statement of co-accused

Rahulkumar Gautam qua the applicant is seriously debatable. In any event, even if the said statement is taken into account, it appears that the role of assaulting the deceased by means of deadly weapon is not attributable to the applicant. Apart from the disclosure statement, prima facie, there is no material to incriminate the applicant.

9. In the circumstances, since the applicant has been in custody for two and half years and it is unlikely that the trial can be concluded within a reasonable period, I am inclined to exercise the discretion in favour of the applicant.

10. The apprehension on the part of the prosecution can be taken care of by imposing conditions.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The applicant Dharmendrakumar @ Vakil Sampatram Gautam be released on bail in C.R. No.555 of 2021 registered with Mahatma Phule police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.

3] The applicant shall mark his presence at Mahatma Phule police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

7] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)