

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1577 OF 2023

Atish Vinayak Bhosale ...Applicant

vs.

The State of Maharashtra ...Respondent

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WITH

BAIL APPLICATION (ST.) NO. 10143 OF 2023

Hasirul Halim Shaikh @ Hashu ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Tapan Thatte i/b. Mohd. S. Mulla, for the Applicant in BA No. 1577 of 2023.

Ms. Tahera Qureshi, for the Applicant in BA (St.) No. 10143 of 2023.

Mrs. Geeta Mulekar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : JANUARY 23 2024

P.C.:

1. Hasirul Shaikh (the accused No. 1) the applicant in Bail Application (St.) No. 10143 of 2023, and Atish Bhosale (the accused No. 2) the applicant in Bail Application No. 1577 of 2023 who have been arraigned in C.R. No.160 of 2022 registered with Shil Daighar police station for the offences punishable under sections 302 and 397 of Indian Penal Code, 1860, along with co-accused Onkar Kasekar, the accused No. 3 and Prashant Periya, the accused No. 4, the child in conflict with law, seek to be enlarged on bail.

2. The applicants and the co-accused were friends. At about 11.30 pm they had gone to Badlapur railway station. At about 00.30 am the applicants and the co-accused booked an Ola car. The cab was booked by using the mobile phone of accused No. 1 Hasirul. At about 2.30 am the applicants allegedly asked the driver to stop the car near under construction bridge on the pretext of answering the call of nature. The child in conflict with law tried to rob the driver of his wallet and two mobile phone handsets and also remove ignition key of the car. The driver was assaulted by all the accused. He was dragged out of the car. As the driver raised a loud alarm, the applicant Atish allegedly gave blows by means of paver-block on the head of the said driver. The applicant Hasirul and the child in conflict with law also assaulted the deceased by means of paver-blocks. As a motor-cycle approached, the accused fled away leaving the driver in an injured condition along with the wallet and mobile phone handsets of the said driver.

3. On the next morning Balkrishna Patil found the driver in a motionless state. Postmortem examination revealed that the driver had died due to a head injury due to hard and blunt impact. The applicants and co-accused came to be arrested. Mobile phone handset was found in the personal search of the applicant Atish.

Another phone of the deceased was recovered pursuant to the discovery made by the applicant Atish. Pursuant to disclosure statement made by the applicant Hasirul, the wallet of the deceased containing personal identification documents, ATM cards etc. were recovered. It further transpired that the applicant Hasirul had lastly hired the cab and there was no drop out date.

4. Mr. Thatte, the learned counsel for the applicant Atish, submitted that the prosecution case rests on circumstantial evidence. The only circumstance against the applicant Atish is that of recovery of the two mobile handset phones. One, in a direct seizure upon the personal search of applicant Atish, post his arrest, and another recovered pursuant to discovery allegedly made by applicant Atish. However, there is no material to establish the nexus between the mobile phone handsets allegedly recovered at the instance of applicant Atish and stolen mobile phone handsets. IMEI number was not given by the owner of the car. Therefore, the said recovery of mobile phone handsets cannot be pressed into service as an incriminating circumstance. It was further submitted that since the co-accused Onkar Kasekar has been released on bail by this Court by an order dated 14th December, 2022 the applicants also deserve the same dispensation.

5. Ms. Qureshi, the learned counsel for the applicant Hisarul supplemented the submissions of Mr. Thatte. It was urged that the applicant has been roped in on the basis of mere suspicion. Though the car driven by the deceased was lastly hired by making call from the mobile of applicant Hisarul, yet, there was an interval of time between the said occurrence and finding of the dead body of the driver. Therefore, the said circumstance can not be arrayed against the applicant Hisarul. The alleged recovery of wallet of the deceased was from a place open and accessible to all. Thus, that circumstance also does not incriminate the applicant Hisarul.

6. The learned APP, stoutly resisted the prayer for bail. It was submitted that there is material to show that the car was lastly hired by the applicants and the co-accused. Banking upon the car log data which shows that applicant Hisarul was picked by the driver at midnight and there was no drop date, the learned App submitted that the complicity of the applicants is squarely established. Taking the Court through the memorandum of disclosure statement and the consequent recovery it was submitted that there are multiple circumstances which have conclusive tendency to incriminate the applicants.

7. The postmortem report indicates that there were multiple external injuries on the person of the deceased including contused lacerated wound over scalp at right temporal region. The medical officer opined that the injuries were possible by hard and blunt object and the cause of the death was head injury due to hard and blunt impact. The time and place of occurrence and the conditions in which the deceased was found prima facie indicate that the deceased met a homicidal death. There is also material to show that on the night of the occurrence, the deceased was at the wheel of the said car.

8. I find substance in the submissions of learned APP. There is material to show that the applicant Hasirul was the person who had lastly hired the cab. The car log data does not indicate that after Hasirul booked the car and it left Badlapur, there was any drop of record. If this is considered in the backdrop of the business model operated by the car aggregator, it prima facie appears that the deceased was lastly in the company of the applicant Hisarul. There are disclosure statements which show that the articles belonging to the deceased were recovered pursuant to the discoveries made by the respective applicants. The recovery of wallet containing the personal identification documents of the deceased, at the instance

of the applicant Hisarul cannot be brushed aside as the discovery was made allegedly from an open and accessible place. At this stage, these twin circumstances prima facie incriminate the applicant Hasirul.

9. The submission on behalf of the applicant Atish that there is no material to show that the mobile phones which were recovered from or at the of the instance of applicant Atish belonged to the deceased, as Imran Shaikh, who owned the said car, and furnished the description of the mobile phone handsets, which were with the deceased, did not give the IMEI numbers does not merit countenance, at this stage. There is material to indicate that the applicant Atish had allegedly initially assaulted the deceased by means of paver-block. Resultantly, there is not much qualitative difference between the role attributed to the applicants.

10. Prima facie, it does not appear that the applicants are entitled to parity with Onkar Kasekar. While releasing the said accused on bail, this Court noted that the said accused was not involved in the actual assault and had gone to check the belongings of the deceased at the time of alleged assault. The Court found that except the statements of the co-accused there was nothing to incriminate the

said accused. That is not the case at hand. Both the applicants have made disclosure statements leading to recovery of incriminating articles. The Court can not lose sight of the fact that an unsuspecting cab driver was done to death at the dead of the night to rob him of valuables.

11. I am, thus, not inclined to exercise the discretion in favour of the applicants.

Hence, the following order.

ORDER

1] The applications stand rejected.

2] 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.

(N. J. JAMADAR, J.)