

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3332 OF 2023

Rahul Virbhan Suryawanshi ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Charan Penthalia a/w. Mr. Amandeep Singh, for the Applicant.
Mr. S.R. Agarkar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : FEBRUARY 21, 2024
PRONOUNCED ON : FEBRUARY 29, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant who is arraigned in C.R. No. 113 of 2022 registered with Shil Daighar police station for the offences punishable under sections 120-B, 302, 364 and 201 of Indian Penal Code, 1860 has preferred this application to enlarge him on bail.

3. Mangesh Patil (the deceased) was the cousin of Akshay Patil (accused No. 3) and Ajinkya Patil (accused No. 4). The deceased and Akshay Patil (accused No. 3) and Ajinkya Patil (accused No. 4) were residing at Vaklan, Dahisar. The deceased and accused Nos. 3 and 4 had a dispute over the ancestral land.

4. The prosecution alleges, as the deceased was not allowing accused Nos. 3 and 4 to develop the ancestral land, accused Nos. 3 and 4 had hired Pravin Jagtap (accused No. 1) and the applicant (accused No. 2) to kill the deceased. A sum of Rs. 50,000/- was paid by the Akshay (accused No. 3). A conspiracy was hatched. On 12th April, 2022 in pursuance of the said conspiracy, Pravin Jagtap (accused No. 1) and the applicant took the deceased to Ulhasnagar on the pretext of consuming liquor. After they had drinks, they made the deceased to board Ford Fiesta car of accused No. 1 on the pretext of visiting a Hukka Parlor. The co-accused Pravin Jagtap (accused No. 1) allegedly tried to strangle the deceased by means of nylon rope. The applicant allegedly assaulted the deceased by means of knife on his neck. After the deceased passed away, the applicant and co-accused had allegedly buried the body of the deceased in the field.

5. Eventually, co-accused Pravin Jagtap and the applicant came to be apprehended. During the course of investigation, the co-accused Pravin Jagtap (accused No. 1) and the applicant allegedly made disclosure statement. Pursuant to the discovery made by co-accused Pravin Jagtap, the body of the deceased was disinterred. The applicant allegedly made discovery leading to the recovery of

the blood stained clothes. The statement of witnesses were recorded who claimed to have identified Pravin Jagtap (accused No. 1) as the person who accompanied the deceased on the night of the occurrence. The applicant was stated to be an associate of Pravin Jagtap (accused No. 1).

6. Mr. Penthalia, learned counsel for the applicant, submitted that there is no evidence which prima facie shows the complicity of the applicant. According to Mr. Penthalia the applicant has been roped in on the basis of mere surmises and conjectures. The statement of Vaibhav Thakkar pressed into service on behalf of the prosecution to show that the victim was last seen in the company of the applicant is unworthy of any credence as the said statement came to be recorded after more than one and half month of the alleged occurrence. Had Vaibhav Thakkar seen the applicant along with co-accused, he would not have missed to state the same at an earlier point of time. Attention was also invited to the fact that the applicant was not identified in the T.I. parade. It was further submitted that as the case rests on circumstantial evidence and the circumstances pressed into service on behalf of the prosecution do not have incriminating tendency qua the applicant, the applicant deserves to be enlarged on bail.

7. In opposition to this, Mr. Agarkar, learned APP resisted the prayer for bail. It was submitted that the applicant and the co-accused Pravin Jagtap (accused No. 1) have made disclosure statements which squarely incriminate the applicant. Moreover, there are witnesses who has seen the deceased in the company of the applicant on the night intervening 12th and 13th April, 2022. There are CCTV footages which show that the deceased was with the applicant and co-accused Pravin Jagtap on the night of occurrence. Since the dead body of the deceased was recovered at the instance of the co-accused Pravin Jagtap (accused No. 1) and the fatal injury is attributed to the applicant, he does not deserve to be enlarged on bail. Mr. Agarkar laid emphasis on the fact that the instant case is one of contract killing and thus the applicant does not deserve bail.

8. I have perused the report under section 173 of the Code and the documents annexed with it. It appears that the deceased went missing on the night of 12th and 13th April, 2022. The brother of the deceased lodged a missing report leading to registration of Missing Case No. 22 of 2022. During the course of investigation, it transpired that the co-accused Pravin Jagtap (accused No. 1) who was using the sim card in the name of Aadesh had called the

deceased. Pravin Jagtap (accused No. 1) was apprehended. Thereupon, Pravin Jagtap (accused No. 1) made a disclosure statement to show the place where the dead body of the deceased was buried. The dead body was disinterred.

9. On the basis of the said disclosure statement, the applicant came to be arrested as Pravin Jagtap (accused No. 1) allegedly disclosed that at the instance Akshay Patil (accused No. 3) who had paid Rs. 50,000/- to Pravin Jagtap (accused No. 1) he and the applicant had taken away the deceased on the pretext of consuming liquor and visiting Hukka parlor and the accused No. 1 had tried to strangle the deceased. The applicant assaulted the deceased by means of knife on his throat.

10. Postmortem report indicates that there were two incised wounds on the front of the neck of the deceased. Internal examination revealed that trachea was cut at the level of thyroid cartilage. The autopsy surgeon opined that the deceased died due to cut throat injury. There is prima facie material to indicate that the deceased met a homicidal death. The prosecution banks on the panchanama of CCTV footage dated 21st April, 2022 which allegedly shows that on the night intervening 12th and 13th April, 2022

between 14.40 pm to 1.15 am the deceased, the applicant and the co-accused Pravin Jagtap (accused No. 1) collected the food parcel from Akshay Hotel, Ulhasnagar. Further, a statement of Vaibhav Thakkar, a cousin of the deceased was sought to be relied upon. He states that on 12th April, 2022 at about 10 pm he had seen the deceased along with two persons. He gave a call to the deceased. However, the later went away along with those two persons in a car. The statement of the said witness came to be recorded on 18th May, 2022. In the T.I. parade the said witness did identify Pravin Jagtap (accused No. 1). However, he did not identify the applicant. It was thus submitted on behalf of the applicant that there is no material to prima facie connect the applicant with the alleged offence.

11. I find it difficult to accede to this submission at this stage. Apart from the alleged CCTV footages and the statements of Vaibhav Thakkar, there is material to indicate that the deceased was found in the company of Pravin Jagtap (accused No. 1) and another person on the night of the occurrence. The person who runs hotel Akshay stated that on the night intervening 12th and 13th April, 2022 three persons had come to hotel Akshay to collect food parcels. One of them was Pravin Jagtap (accused No. 1). In the CCTV footage the deceased was allegedly seen to be accompanied

the co-accused Pravin Jagtap (accused No. 1) and the applicant. At this stage, the nature of the accusations deserves consideration. The co-accused Pravin Jagtap and the applicant allegedly killed the deceased at the instance of Akshay Patil (accused No. 3), as a contract killers.

12. Allegedly the dead body of the deceased was found pursuant to the disclosure statement made by co-accused Pravin Jagtap (accused No. 1). The dead body was buried in the field. It was disinterred. The applicant had also made a disclosure statement leading to the recovery of the blood stained clothes. The applicant was allegedly the person who had unleashed blows by means of knife on the neck of the deceased.

13. In the totality of the circumstances, at this stage, the gravity of the allegations and severity of the offence cannot be lost sight of. The allegations of contract killing are grave in nature. Therefore, at this stage, the applicant can not draw any mileage from the fact that there was delay in recording statement of one of the witness who had allegedly seen the deceased in the company of the applicant and the failure of the said witness to identify the applicant in the T.I parade.

14. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands 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.)