

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

CRIMINAL BAIL APPLICATION NO. 3686 OF 2022

Jitesh @ Jittu Ramesh Tambe ... Applicant
Versus
The State of Maharashtra ... Respondent

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Mr. Sandeep R. Karnik a/w Rohan V. Bhosle, for the Applicant.
Ms. Anamika Malhotra, APP, for the Respondent-State.
Mr. Sachin Sarkale, PC 92677, Kherwadi Police Station present.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 31st JANUARY, 2024.

P.C.

This is an application under Section 439 of the Code of Criminal Procedure by the applicant, who is one of the four accused, being prosecuted by Kherwadi Police Station, Mumbai, in Crime No. 216 of 2021, for the offences punishable under Sections 302, 120B, 201 r/w 34 of the Indian Penal Code (“IPC”).

2 Shorn of unnecessary details, a few facts germane for disposal of this application can be summarized as under.

3 One Mr. Dilip Khatri is the first informant. On the fateful day of 16th May, 2021, around 1.15 in the midnight, he was driving

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his rickshaw. While returning from Vakola Chirag Nagar, he noticed a person lying on the street who was being brutally assaulted by two persons by means of some sharp edged weapons. Later on it was identified as deceased Dyaneshwar @ Dadu Shivprasad Upadhyay, who succumbed to the injuries. According to the prosecution the motive behind the murder of deceased Dnyaneshwar was that a year before the incident, in the month of August, deceased Dnyaneshwar was arrested by Kherwadi Police Station, Mumbai, in connection with murder of one Ramesh Nishad. Accused Mukesh @ Lala Sitaram Nishad is the main accused and the brother of Ramesh Nishad who alleged to have been murdered by Dnyaneshwar.

4 The Investigating Officer held investigation into the crime. He visited the scene of occurrence. He recorded spot *panchanama* as well as statements of witnesses. All the four accused were arrested. A scooter alleged to have been used at the time of the alleged offence came to be seized at the behest of the applicant under Section 27 of the Indian Evidence Act. Autopsy report confirms it to be a homicidal death. Muddemal has been forwarded to the Forensic Science Laboratory for chemical analysis. After

investigation, a charge-sheet is filed and the applicant as well as rest of the accused are awaiting trial. Meanwhile, one of the co-accused- Prashant Ramesh Salvi has been enlarged on bail by this Court vide order dated 4th September, 2023.

5 I heard Mr. Karnik, learned Counsel for the applicant as well as learned APP at a considerable length.

6 At the outset, learned Counsel for the applicant submits that the role attributed to the applicant is that he was simply standing at the spot with his scooter and nothing more. In the test identification parade, none of the suspects was identified by the complainant. There are no criminal antecedents to his discredit. Ever since his arrest on 19th May, 2021, the applicant is behind the bars for 2½ years with no chance of the trial being concluded within a reasonable period. It is submitted that the entire case of prosecution is based on circumstantial evidence. Even there is no motive, much less, murdering the deceased has been shown by the prosecution, save and except, presence of the applicant at the time of the incident.

7 Per contra, learned APP while strongly objecting release of the applicant on bail, submits that main assailants along with the present applicant have a common intention to eliminate the deceased and in pursuance to a criminal conspiracy hatched by them, deceased was done to death.

8 Learned APP would invite my attention to the statement of Kumar Ritesh Balmukund Chaturvedi, who is nephew of the deceased. His statement reveals that on 15th May, 2021, when he was passing through a lane at Sant Dnyaneshwar Nagar around 9-30 p.m., accused Lala, Kiran and the applicant were found together and the moment they noticed this witness, they started coming near him due to which he escaped from the place and informed the said episode to his mother. This itself, at this stage, *prima facie* can not be construed to be a conspiracy hatched by the applicant along with rest of the accused to eliminate the deceased.

9 Merely because the Investigating Officer had seized the scooter of the applicant in view of Section 27 of the Indian Evidence Act, would not be a ground to refuse bail to him as the role which was attributed to the co-accused Prashant Ramesh Salvi

vis-a-vis the applicant is almost on the same pedestal. No doubt, one of the assailants was on a pillion seat of the scooter which was driven by the applicant; nevertheless, there is no overt act attributed to the applicant and, therefore, one of the grounds for his release could be parity.

10 The test identification parade conducted by the Nayab Tahasildar appears to be a futile attempt, in the sense, first informant Dilip Khatri could not identify any of the assailants.

11 In light of the aforesaid facts, circumstances and material on record coupled with the fact that charge has not yet been framed so also incarceration of the applicant for more than 2 and ½ years, he deserves bail, however, stringent conditions are required to be imposed. Now, the order;

: O R D E R :

(a) The application is allowed.

(b) The applicant – Jitesh @ Jittu Ramesh Tambe be released on bail in Crime No.216 of 2021 registered with Kherwadi Police Station, Mumbai, on

executing a P.R bond in the sum of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

(c) The applicant shall attend the Kherwadi Police Station on every Monday, Thursday and Sunday between 3:00 p.m. and 6:00 p.m. till framing of the charge.

(d) After framing the charge, the applicant shall attend the trial Court scrupulously on each date.

(e) The applicant shall not leave the jurisdiction of the trial Court without seeking prior permission.

(f) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to the Court or any Police Officer. The applicant shall not tamper with the evidence.

(g) The applicant shall furnish his cell number as well as residential address to the Investigating Officer and shall also inform in case of any change.

(h) The applicant shall deposit his passport, if any, with the concerned Police Station.

(i) Needless to say that breach of any of the conditions would entitle the prosecution to pray for cancellation of bail.

12 The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]