

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

CRIMINAL BAIL APPLICATION NO. 844 OF 2024

Rahulkumar Baburam Gautam	...Applicant
Versus	
The State Of Maharashtra	...Respondent

Mr. S. S. Sawalkar for the Applicant.

Mr.Avinash Naik, APP for the Respondent – State.

CORAM	:	N. J. JAMADAR, J.
DATE	:	11th SEPTEMBER 2024

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PC.:

1. Heard Mr.Sawalkar, the learned Counsel for the Applicant and Mr. Naik, the learned APP for State.
2. The Applicant, who is arraigned in C.R. No.555 of 2021 registered with Mahatma Phule Chowk Police Station, Taluka-Kalyan, District-Thane, for the offences punishable under Sections 120-B, 302, 364, 379, 201 read with 34 of the 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.

5. It further transpired that the applicant had booked the car by making a call from applicant's mobile phone. The applicant came to be arrested. During the course of investigation, the applicant made a disclosure statement and had voluntarily shown the place where the knife, by means of which the deceased was killed, and the blood stained clothes of co-accused Bachai @ Ghanshyam Gautam, were concealed.

6. Mr. Sawalkar, the learned Counsel for the Applicant, submitted that the prosecution case rests on circumstantial evidence only. By an order dated 20th March 2024 in

BA/1137/2023, this Court has released Dharmendrakumar @ Vakil Sampatram Gautam (A2), on bail. On parity of reasoning, the applicant also deserves the same dispensation. It was urged that the applicant has been in custody since 11th August 2021. Trial has yet not been commenced. Therefore, on account of long period of incarceration also, the applicant deserves to be enlarged on bail.

7. Mr. Naik, the learned APP, resisted the prayer for bail. It was submitted that there is a strong prima facie case against the applicant. The principle of parity does not apply as the applicant is one of those assailants, who had unleashed the fatal blow by means of knife. The applicant had made discovery. In fact, the applicant was the person who had booked the car by making a call from his phone. Thus, the applicant cannot draw any mileage from the fact that Dharmendrakumar Gautam (A2), who came to be implicated on the basis of the disclosure statement made by the applicant, has been enlarged on bail.

8. I have perused the report under Section 173 of the Code and documents annexed with it. Undoubtedly, the prosecution case rests on circumstantial evidence. Nonetheless, the

circumstances arrayed against the applicant appear to have a marked incriminating tendency than those arrayed against the Dharmendrakumar Gautam (A2), who has been enlarged on bail, by this Court. While releasing Dharmendrakumar Gautam (A2) this Court found that apart from the disclosure statement made by the applicant, there was no other credible material against Dharmendrakumar Gautam (A2).

9. In contrast, it is imperative to note that, the applicant made discovery leading to recovery of knife, the weapon of offence, and the clothes which co-accused Bachai @ Ghanshyam Gautam (A6) allegedly wore at the time of the occurrence. Prima facie, the discovery appears to incriminate the applicant as the applicant has volunteered to point out the place where the knife, by means of which the applicant had given a blow on the throat of the deceased, after the latter was initially stabbed by co-accused Karan Kumar Gautam (A5), was concealed. Thus, it cannot be said that, prima facie, the discovery cannot be fastened to the applicant.

10. Mr. Sawalkar invited the attention of the Court to a judgment of the Supreme Court in the case of ***Radhey Shyam***

and Ors. Vs. State of Rajasthan¹ wherein it was enunciated that the conviction cannot be sustained only on the basis of the alleged recovery of the weapons of assault at the instance of the accused.

11. Had it been a case of discovery alone, different considerations would have come into apply. In addition to the discovery made by the applicant, there is material to show that the applicant had booked the car of the deceased, by making a call from the applicant's phone. Furthermore, the panchnama of the CCTV footages indicate that the applicant, alongwith the co-accused, had boarded the car of the deceased at about 11:00 p.m. at Chhatrapati Shivaji Maharaj Chowk, Kalyan (W). These, two circumstances, if considered in conjunction with the discovery made by the applicant leading to recovery of weapon of offence, make out a prima facie case against the applicant.

12. The Court cannot loose sight of the premeditation with which the offence was committed. The offence is of grave nature. An unsuspecting and innocent person, who was driving the car to earn his livelihood, was allegedly killed by luring him to drive the assailants to another city.

¹ AIR2023SC1910

13. In the aforesaid view of the matter, I am not inclined to accede to the submission of Mr.Sawalkar that the applicant is entitled to claim parity with Dharmendrakumar Gautam (A2). To conclude, having regard to the nature and gravity of the offences, the punishment the offences entail and pre-planned manner in which the offences were committed, I am not inclined to exercise discretion in favour of the applicant.

14. Hence the following order:

ORDER

- (i) The Application stands rejected.
- (ii) 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 co-accused and the trial court shall not be influenced by any of the observations made hereinabove.
- (iii) Application disposed.

(N. J. JAMADAR, J.)