

Common Order below Exh.52 and 53 in Sessions Case No. 48/2018.

- 1) Application Exh.52 is filed by accused No.2 - Akash Shankar Gangurde while application Exh.53 is filed by accused No. 5 - Jyoti Champalal Jat for grant of regular bail u/s. 439 of Cr.P.C. I have hear respective counsels for both the applicants and ld. APP. I have gone through the record.
- 2) Accused persons are charge-sheeted before this Court for the offence p.u/s. 302, 201 and 120-B of IPC. It is the second bail application filed by accused No. 5 - Jyoti Jat. Her previous bail application filed below Exh.45 was rejected by this Court on 01.10.2019 and this application is filed on changed circumstances. It is the case of prosecution that present applicant / accused No. 5 is the wife of deceased Sahebrao Champalal Jat. Accused No. 5 has illicit relations with accused No.1 and when this fact came to the knowledge of deceased. He used to harass accused No.5. Accused No. 3 is brother of accused No.5 who had also some dispute with deceased, hence, they hatched conspiracy to kill the deceased and for that purpose, they hired applicant / accused No. 2 - Akash Shankar Gangurde and accused No.4 - Sanjay Karbhari for a valuable consideration. As such, allegations against accused No.5 is such that she hatched conspiracy to commit murder of deceased. Allegations against accused No.2 are such that as per direction of accused No. 5 and 3, he purchased chopper on 30.03.2018 and on 03.04.2018, he purchased petrol from a petrol pump and taken the deceased to Manmad Railway Station under the pretext of receiving relatives and then, committed his murder and to disappear the evidence, they set the dead-body of deceased on fire with the help of petrol.
- 3) As application Exh.45 filed by accused No. 5 - Jyoti was rejected by this Court on merit on 01.10.2019 on the ground that her children have raised objection for releasing her on bail and that she being main culprit, there is likelihood of her remaining abscond, if released on bail. It becomes necessary on her part to show change in circumstances. To show change in circumstances, applicant had contended that her children were pressurized to oppose bail application filed by her due to which there is objection, except this ground, other grounds raised by her are similar to previous bail application.

4) The prosecution has opposed the application on the ground that the allegations levelled against this applicant are serious. The applicant is mastermind of the offence and the offence is punishable with death or life imprisonment, due to which she should not be released on bail.

5) Application Exh.52 is filed by accused No.2 Akash on the ground that he is falsely implicated in this crime. No incriminating material has been recovered from him. He has no criminal background. He is ready to abide each and every condition which may be imposed. Statement of witness Kasim Shaikh shows that he has not purchased the alleged chopper. No petrol bottle has been seized from the spot. There is nothing to show that accused No.1 and 5 had illicit relations and therefore, motive is also absent. The place from where incriminating articles are recovered, are open to public and therefore, there is no cogent evidence. Moreover, applicant is in jail custody since 05.04.2018 and there is no likelihood that trial would conclude within short span of time. However, prosecution opposed the application on the ground that this applicant had played vital role while committing the offence. There is evidence that he committed the murder of deceased with the help of chopper and then, set the dead-body on fire with the help of petrol. He had taken the deceased under the pretext of receiving relatives and therefore, he should not be released on bail.

6) During cross of argument, the ld. counsel for both the accused also pointed out that applicants are also entitled to be released on bail on the ground of parity because after rejection of first bail application of accused No.5 and accused No. 3 - Kailas Puneekar on 01.10.2019 vide application Exh.33 and 45, accused No. 3 - Kailas Puneekar is released on bail by Hon'ble Bombay High Court vide Bail Application No. 3076/2019 on 16.12.2019. The ld. counsel also pointed out finding of Hon'ble High Court to the effect that there is no eye-witness to the incident and the case is based on circumstantial evidence. The prosecution case is relying on CCTV footage recorded in camera installed at platform No. 3 at Manmad Railway Station and that the applicant is implicated only on suspicion being brother of co-accused.

7) As far as the role of applicant No. 5 - Jyoti is concerned, there is

already finding of this Court that as per story of prosecution, she is mastermind of the crime, she had motive to commit murder of deceased having illicit relation with accused No.1. As far as ground of parity is concerned, finding of Hon'ble Bombay High Court in relation to role played by accused No.1 cannot be applied to the role played by present applicant because it is not the case of prosecution that this applicant herself had been to the spot of incident or was accompanied with other accused while purchasing the chopper, petrol land while taking the deceased to Manmad Railway Station, under the pretext of receiving relatives.

8) As far as role placed by accused No.2 - Akash Gangurde, it is also the finding of Hon'ble Bombay High Court that he was still in the company of deceased in the night of incident and the weapon is also recovered from this applicant. Statement of this accused Akash recorded u/s. 27 of Evidence Act also reveals that he discovered the petrol pump from where he purchased the petrol in the night of incident and he is also appearing in CCTV footage while purchasing petrol. Under such circumstances, it cannot be said that there is no evidence either against accused No.2 Akash or against accused No. 5 - Jyoti. The allegations levelled against both the applicants are serious. The offences are punishable with death or life imprisonment and therefore, if the applicants are released on bail, there is every likelihood that they may remain abscond. Though the charge-sheet is filed in the year 2008, one or the other accused are filing successive bail application either before this Court or before Hon'ble Bombay High Court, due to which charge could not be framed. Considering the fact that accused are under-trial prisoners, charge can be framed and trial can be expedited and concluded within short span of time. Hence, considering this aspect, I deem it fit to pass following order.

Order

1. Both application filed below Exh.52 and 53 are rejected.

Niphad.
11.02.2020.

(R. G. Waghmare),
Additional Sessions Judge,
Niphad.