

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO. 2817 OF 2015.

BASHIR S/O FATTU TADVI.
VERSUS
THE STATE OF MAHARASHTRA.

Appearance =>

Mr. Naseem R. Shaikh, Advocate for the Applicant.

Mrs. S.G. Chincholkar, Additional Public Prosecutor for the State of Maharashtra.

CORAM : **V.M. Deshpande, J.**

DATE : **2nd July, 2015.**

Per Court :-

Present Criminal Application is filed by the Applicant for grant of regular bail in connection with CR No.49/2014 registered with Police Station, Savda, Taluka – Raver, District – Jalgaon for the offences punishable under Section/s.302 of the Indian Penal Code.

[2] Heard Mr. Naseem R. Shaikh, learned counsel for the Applicant and Mrs. S.G. Chincholkar, learned Additional Public Prosecutor for the State of Maharashtra, in extenso.

[3] According to the prosecution case, there is one eye witness. His name is Kishor. Eye witness Kishor, present Applicant and deceased Prabhakar @ Sambhajirao Rama Jadhav were working as

waiter on Hotel Punjab Dhaba of village Savda, Taluka – Raver, District – Jalgaon, owned by Bharat Dhirajkumar Arora. First Information Report is lodged on 23rd June, 2014. First Information Report shows that, other waiter by name Gajanan Sakalkar came to the First Informant on 26th June, 2014 in the morning at 6.30 a.m. and informed that Prabhakar is lying in a dead condition, therefore, Bharat Arora immediately rushed towards the Dhaba; where he found the dead body of Prabhakar. From the First Information Report itself it is clear that the first informant – Bharat is not eye witness.

[4] According to the prosecution, Kishor, co-waiter have witnessed the crime. Statement of Kishor is dated 25th June, 2014. Thus, there is delay of two days to record the statement of witness – Kishor. From the prosecution case, it is clear that, eye witness Kishor was staying at Dhaba itself and on 23rd June, 2014 in the morning he was present there. If he had witnessed the crime; normally it would have been disclosed by him to his owner – Bharat Arora, when Bharat Arora visited the Dhaba on getting the information, however the report is silent on that aspect.

[5] Further the narration in the statement of Kishor in respect of two earlier incidents is not at all supported by Bharat Arora, either in the First Information Report or in his supplementary statement. Statement of Kishor shows presence of Bharat. In that view of the matter, earlier incidents are not at all corroborated by the first informant.

[6] The learned Additional Public Prosecutor submitted that, there is recovery of clothes of present Applicant under Section 27 of the Indian Evidence Act. Admissible portion of the memorandum statement shows that said statement does not reflect the place wherein the clothes are allegedly kept concealed. In that view of the matter, prima faice, importance cannot be attached to such discovery.

[7] Looking to the aspect that there is considerable delay in the eye witness account and when the investigation is over, Applicant can be released on bail.

ORDER

(i) Criminal Application is allowed.

(ii) Applicant - BASHIR S/O FATTU TADVI shall be released on regular bail on he executing P.R. Bond of Rs. 10,000/- [Rs. Ten Thousand.] with one solvent surety in the like amount, in connection with CR No.49/2014 registered with Police Station, Savda, Taluka – Raver, District – Jalgaon for the offences punishable under Section/s.302 of the Indian Penal Code.

(iii) Bail before trial court.

(iv) The Applicant shall attend Police Station, Savda, Taluka – Raver, District – Jalgaon once in a week, preferably on every Sunday, between 3.00 p.m. to 5.00 p.m., till trial is over.

(v) Applicant shall not tamper with prosecution witnesses.

(vi) With this Criminal Application is allowed and same is disposed of, accordingly.

(V.M. DESHPANDE, J.)