

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1138 OF 2015

Lahu Santu Ghanwat

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.Jayesh Kocheta for the Applicant

Mr.S.S. Pednekar APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **AUGUST 7, 2015**

P.C.:

1. This bail application is filed under section 439 of the Criminal Procedure Code as the applicant/accused is facing charges under sections 302, 201 of the Indian Penal Code registered at the instance of one Rohidas Dagdu Zinjurke at C.R. no.490 of 2014 with Chakan police station, District Pune. It is the case of the prosecution that on 15.10.2014, one Mohan Dattu Zinjurke, the deceased cousin of the complainant, went for dinner at the house of one Babu Tanaji Mengale. He left his house at around 10.30pm. But he did not return home. Therefore, the family members of the deceased made enquiry in the early morning on 16.10.2014 with the villagers and they found the dead body of Mohan in a well. However, there were injuries on his head, face and eyes. Blood stains were also found on the spot and his slippers and so, the offence

under section 302 was registered. The applicant/accused was arrested on 3.11.2014. Hence, this bail application.

2. The learned Counsel for the applicant/accused submitted that the case of the prosecution stands on weak evidence. The only witness Vinayak Balu Gunjal has given four statements and two statements are inconsistent with other two statements. He has initially stated that he was given a proposal to kill Mohan for principal accused Kashinath Ramratan Temgire. He had accepted the same for Rs.1 lakh. However, according to his statement, he did not kill him but he was throughout with the principal accused and he had lied at the time of giving first 2 statements before the police. He submitted that thereafter he changed his statement 15 days after the first statement. He is not a person of credence and therefore his statement *prima facie* needs to be discarded. He further submitted that brother of principal accused is in prison serving life term. He was released on parole during that period. He was supposed to surrender on 16.8.2014, however, he surrendered on 16.10.2014 at 5.15pm. The learned Counsel submitted that it appears there is a connection of the brother of the principal accused on parole and his surrendering at the police station and the incident of murder. He submitted that the applicant/accused is innocent and has not committed any offence.

3. The learned Prosecutor has opposed the bail application. He pointed out that the statement of Vinayak Gunjal was recorded under section 164 of the Criminal Procedure Code and he has specifically stated that the applicant/accused was not only present at the time of the incident but he pushed the deceased Mohan. So Mohan fell down and thereafter Kashinath assaulted him with stone. He further pointed out that as per the statement of Vinayak Gunjal, it was Lahu and Kashinath lifted the body of the Mohan and threw it in the well. Thereafter, they conspired that the incident would be kept secret and not to be told to anybody. This is not a case to grant bail.

4. Perused the FIR. It is true that the only evidence against the applicant/accused is the sole statement of Vinayak Gunjal. It is also true that he has changed his statements and gave different versions nearly after 15 days to the police. In the first two statements, he has completely misguided the police. However, in the third statement, he came out with true facts and *prima facie*, it appears that he has come out with true facts. He told a different story specifying the roles of the principal accused and the applicants/accused. Though there is inconsistency in the statements of the witness Vinayak Gunjal, it cannot be overlooked that this witness is an eye witness and if stands, the offence is proved. At this stage, so also it is to be noted that the applicant/accused has disclosed that he was offered a contract to kill. He has also accepted the case that he was in

need of money. However, he did not participate in the actual killing of Mohan. Therefore, his evidence *prima facie* cannot be discarded and as he is an eye witness, it shows that the applicant/accused has participated in the murder and thereafter he helped to destroy the evidence by throwing the body in the well.

5. In the circumstances of the case, the bail application is rejected.

(MRS.MRIDULA BHATKAR, J.)