

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

BAIL APPLICATION NO.2479 OF 2015

Arjun Raju Salunke

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Ms Anjali Patil for the Applicant.

Ms Veera Shinde, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 22nd DECEMBER, 2015.

P. C. :

This is an application for bail filed by the aforesaid Applicant, who is facing trial in Sessions Case No.390 of 2015 pending on the file of Additional Sessions Judge, Pune, for offence punishable under section 302 r/w. 34 of the IPC.

2. The allegations against the Applicant in brief are that on 19.2.2015 the Applicant alongwith the co-accused committed murder of Shivaji Salunke. The FIR in the said crime was registered on the basis of the statement made by the co-accused. Subsequently, the co-accused and the Applicant herein were arrested and upon completion of investigation, charge-sheet was filed and the case being sessions

triable, committed to the Court of Sessions. Applicant had filed an application before the Additional Sessions Judge, which came to be rejected vide order dated 1.10.2015. Hence, the present application.

3. Ms Anjali Patil, the learned counsel for the Applicant has submitted that the crime was registered on the basis of the confession statement of the co-accused. She has submitted that the said report is hit by section 25 of the Evidence Act. She has further submitted that the statements of Sunil Bharne and Yamuna Abnave were recorded after considerable delay. She has further submitted that the post mortem report does not indicate that the death of Shivaji Salunke was homicidal. She has further stated that there is no prima facie material to indicate that the Applicant had any motive to cause the death of Shivaji Salunke. She has submitted that the Applicant was taken in custody in February-2015 only on suspicion. She contends that the Applicant cannot be detained in custody without there being any prima facie material to show his involvement in the crime.

4. Ms Veera Shinde, the learned APP has submitted that the body of the deceased Shivaji Salunke was found hanging. The post mortem report shows that the death was due to Asphyxia due to hanging. The statement of the wife of the deceased prima facie proves

the motive. She has submitted that the statement of one Jainuddin Shaikh also prima facie proves the involvement of the Applicant in committing the crime. She has further stated that statements of the two witness viz. Sunil Bharne and Yamuna Abnave also prove that the Applicant was last seen in the company of the deceased immediately prior to the death of the deceased. Furthermore, the statement of the witness Ukharam Tararam Choudhari also prima facie proves that the co-accused had purchased a string from his shop.

5. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State.

6. The panchanama at page 46 prima facie reveals that though the body of Shivaji Salunke was seen hanging in one of the rooms of a chawl, the distance between the feet of the deceased and the floor was barely 2” to 2.5”. This fact prima facie indicates that the death was not suicidal.

7. The said panchanama also reveals that one white colour string was found tied around the neck of the deceased. The statement of Ukharam Tararam Choudhari prima facie reveals that on 18.2.2015

the co-accused had purchased 12 feet long white colour string from his shop. The statements of Yamuna Abnave and Sunil Bharne prima facie indicate that the deceased was in the company of the Applicant and the co-accused till about 1.30 a.m. The statement of Yamuna Abnave prima facie reveals that on 18.2.2015 at about 12.30 p.m. the Applicant and the co-accused as well as the deceased had visited her house and they were under the influence of alcohol. She has further stated that they had left her house at about 3.30 p.m. and had gone to one restaurant and returned after having lunch. She has stated that they had dinner at her house and left her house at 12.00 a.m. The statement of Sunil Bharne prima facie reveals that on 19.2.2015 at about 1.15 a.m. to 1.30 a.m. he had seen the deceased in the Car of the Applicant. He has stated that the deceased was in a sleeping position.

8. The post mortem report does not specifically give the time of death, nonetheless, the findings recorded in column No.21 indicate that the stomach contained Dal rice, 400 ml, semi solid food and gas and semi digested food in the small intestine. These findings prima facie reveal that the death was caused within 2-3 hours from the last meal. The records thus prima faice reveal that the Applicant was last seen in company of the deceased immediately prior to the death.

9. The statement of the wife of the deceased prima facie reveals that her husband had initially agreed to sell to the Applicant herein two gunthas of land from survey No.22/2 of village Mann, Taluka - Mulshi District-Pune, however, in April, 2013 the Applicant herein had induced him to sell total 10 gunthas of land. She has stated that the Applicant had not paid the full price and that her husband was constantly demanding money from the Applicant. She has further stated that the Applicant had assured to pay additional five lakhs but had not paid the same.

10. The aforesaid circumstances prima facie indicate the involvement of the Applicant in committing the offence. The delay in recording the statement, is not material at this stage. Considering the gravity of the offence, in my considered view the Applicant is not entitled for bail. Furthermore, it is stated that the case is fixed for framing of charge on 11.1.2016. The material witnesses are from the same locality wherein the Applicant was residing and the possibility of the Applicant influencing the witnesses cannot be ruled out. Release of the Applicant on bail can therefore hamper the trial.

11. Considering all these aspects the Applicant is not entitled for bail and hence, this application is dismissed.

(ANUJA PRABHUDESSAI, J.)