

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

3 CRIMINAL APPLICATION NO. 6694 OF 2015

PINTU S/O JAYSINGH RATHOD
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Deshmukh Vivekanand B.
APP for Respondent State: Mr. S. D. Kaldate

CORAM : T. V. NALAWADE, J

DATE : 18th April, 2016

PER COURT :

1. This is forth application filed for bail. First application was withdrawn when this Court had expressed that this Court was not inclined to grant bail. Other two applications were dealt with by the other Hon'ble Judge who is not available at this station now. In view of this circumstance, it was necessary for the applicant to show that there has been change in circumstance.

2. Learned counsel for the applicant submitted that the applicant has been behind bars for more than one and half years and on that ground he wants bail. He submitted that one of the accused of the case has filed application in the Sessions Court for transfer of the case and due to that the matter cannot not make

progress. This Court has gone through the copy of the said application. It appears that advocate representing accused No.2 has made application in Sessions Court on his personal ground. Due to the cause mentioned in the said application, this Court holds that no value can be given to the said application in the present proceeding.

3. This Court had occasion to consider material against the present applicant in the past but due to withdrawal, no reasoned order was made. The material collected shows that the crime came to be registered on the basis of report given by a son of accused No.1. Brother of the first informant was murdered by accused Nos.1 to 3. There are allegations that mother of the deceased, (Accused No.1), had illicit relations with one person. The father of the first informant is dead. The deceased was proving to obstacle in keeping the illicit relation and so the mother had taken decision to finish him. About two days prior to giving of the FIR i.e. on 06.09.1914, in the evening time, the present applicant and Jaysing Rathod, other accused took Pappu in a jeep away from the residential place in the presence of first informant. Mother had also gone with them. On the next day, only mother returned

to home. As Pappu had not returned, enquiry was made with accused no.1 mother but initially she avoided to disclose anything. Then in the presence of villagers she admitted that with the help of present accused and other accused she had committed the murder of deceased Pappu by using stone and they had disposed of the dead body in Karnataka State. Crime came to be registered on the basis of this information against the mother, present applicant and third accused.

4. During the course of investigation, the present applicant gave statement under section 27 of the Evidence Act and after that statement, he took to police to the spot where attempt was made to dispose of the dead body. The dead body was recovered at the instance of the present applicant. Under other statements given u/s 27 of the Evidence Act, part of the deceased was recovered.

5. The learned counsel for the applicant submits that the statement, on the basis of which the part of the deceased was recovered, was a joint statement, statement of present applicant and mother and so, that cannot be used against the present applicant. He placed reliance on the following reported cases:

- (1) AIR 1978 SUPREME COURT 527, Babu Singh and others Vs. The State of U.P.
- (2) 1996 (4) CCR 337, Narendra Kumar Dhir and another vs. Republic of India.
- (3) 1978 SCR (1) 535, State of Rajasthan, Jaipur Vs. Balchand @ Baliay.
- (4) 1978 SCR (2) 371, Gudikanti Narasimhulu and others Vs. Public Prosecutor, High Court of Andhra Pradesh,
- (5) (1980) 82 BOM.LR.173, Govind Krishna Jadhav Vs. State of Maharashtra.

6. It is job of the trial court to decide as to which part or whether the substantive evidence which would be given to prove the statements under section 27 of the Evidence Act can be accepted and believed. At this stage, that piece of evidence cannot be discarded straight away. The material collected against the present applicant is of the nature of last seen, extra judicial confession given by one co-accused and also recovery of incriminating articles including dead body under section 27 of the Evidence Act.

7. Heinous crime was committed due to illicit relationship and so there is material on motive also. Considering the material collected and the fact that

there is one young boy who is first informant, who had seen lastly to the deceased in the company of the present applicant, this court feels that there will be danger to the life of the first informant if the present applicant is released on bail. There is possibility of tampering with the prosecution witnesses.

8. The circumstance that the case has not made progress cannot be considered as it can be seen that attempt is being made by one of the accused to protract the hearing of the case. There is no change in circumstances and there are aforesaid circumstances. This Court holds that this is not a fit case to grant bail. In the result, the application stands rejected.

9. The trial court is expected to dispose of the matter expeditiously and in any case within four months from the date of this order.

(T. V. NALAWADE, J.)

JPC