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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.581 OF 2016
WITH
CRIMINAL APPLICATION NO.281 OF 2016
IN
CRIMINAL BAIL APPLICATION NO.581 OF 2016

Rajendra Shankar Kharade	 Applicant
V/s.	
The State of Maharashtra	 Respondent

and

Shashikant S. Patil	... Intervener.
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Mr. Rahul S. Kate, I/by Amitkumar D. Sale, for the Applicant.

Mr. Arfan Sait, APP for the Respondent State.

Mr. Umesh R. Mankapure, for the intervener

CORAM : A. M. BADAR, J.

DATE : 22nd JUNE, 2016.

P.C. :

1. The applicant/accused in Crime No.182 of 2015, for offence punishable under Section 302 of the Indian Penal Code, registered with Islampur Police Station, District: Sangli, at the instance of Shashikant Patil, brother of deceased Rajendra Patil, by this application seeks bail.

2. Heard the learned counsel for applicant. He argued that

evidence regarding motive in this case is based on circumstantial evidence is shaky as the agreement of leave and license in respect of Hotel Manorama was not subsisting on the date of incident giving motive to the applicant to eliminate the owner of the hotel. He further argued that though last seen theory is propounded by the prosecution, the evidence in this case in the form of call detail records of cell phone of applicant and deceased Rajendra would show that at the time of alleged incident, they were not at all together. By pointing out version of the informant in the F.I.R. it was argued that assault was by means of stone whereas an iron rod is shown to have been recovered. According to the learned counsel for applicant, the applicant was arrested after two days with blood stained clothes on his person and no prudent person could wear blood stained clothes after committing murder for two days.

3. As against this, the learned APP argued that ocular evidence got precedence over the call detail records. He further argued that witnesses are there to show that the deceased was lastly seen in the company of the present applicant.

4. According to prosecution case, Rajendra Patil (since deceased) was owner of Hotel Manorama situated at Peth Sangli Road. It was taken on leave and licence basis by Pratap Kharade- brother of the applicant. The applicant was called by him to manage the affairs of hotel.

The prosecution case is that Eating house was earlier having a licence from the Excise department which was required to be surrendered, Therefore the hotel and bar was not in operation. The deceased had applied for fresh licence from the Excise Department for serving liquor. As the issue of that licence was not processed expeditiously, applicant Rajendra Kharade had grudge against the deceased. And therefore he killed the deceased.

5. As seen from the F.I.R., at about 7.15 p.m. of 11.8.2015, informant/brother of the deceased got phone call from witness Rajendra Shinde. It was informed that Rajendra Patil is lying inside the gate of the Hotel and that gate is locked. The informed rushed to the hotel and broke open the lock to see deceased Rajendra Patil lying in a pool of blood having a big stone on his head.

6. Perusal of the chargesheet shows that the prosecution is placing reliance on the "last seen theory". This theory comes into play when time gap between the accused and deceased were seen alive and when deceased is found dead is so small, that possibility of any person other than accused being the author of the crime becomes impossible.

7. The chargesheet shows that deceased Rajendra Patil had arranged a dinner at Hotel Manorama, on the eve of Akhada festival. Statements of Rajendra Shinde and Bharat Kadam shows that they were

making arrangement of the said party. Their statements show that at about 6.40 p.m. on 11.8.2015, they had been to Hotel Manorama for delivering some articles and at that point of time, they saw present applicant in the hotel. Statements of Suhas Patil and Prashant Patil show that on 11.8.2015 at about 7 to 7.15 p.m. they saw Rajendra Patil (since deceased) at the gate of hotel Manorama. Both these witnesses had talk with Rajendra Patil at that place. Statements of these witnesses show that at that time the applicant was inside the gate of Hotel Manorama and deceased Rajendra Patil thereafter entered in the hotel. Immediately thereafter at 7.40p.m. witness Rajendra Shinde and Bharat Kadam reached hotel Manorama to see Rajendra Patil lying in a pool of blood with a big stone on his head. This is the evidence collected during investigation in support of "last seen" theory.

8. Perusal of spot panchnama shows that lock on the gate of hotel Manorama was found broken, obviously because the informant and others had broke open the said lock to enter inside the hotel. Key of that lock was ultimately found in possession of the present applicant and during investigation said key was verified by the Investigating Officer. It was found to be of the same lock, which was put up at the gate of Hotel Manorama while dead body was lying inside hotel.

9. At the instance of present applicant iron rod stained with

blood came to be recovered and Medical Officer has opined that injuries found on the dead body are possible by iron rod.

10. So far as motive is concerned, nomenclature of the document hardly plays any role. What is material is the intention. Though the document may be titled as licence but it can be lease when the exclusive possession of the premises is with the lessee. The hotel appears to be in possession of the applicant. As witnesses have found the present applicant in charge of hotel Manorama, it cannot be said that there was no motive, as on the day of incident, leave and licence agreement was not in operation. It appears that the said Eating house was earlier having licence for FL III which it was surrendered and issuance of fresh licence was in process, but there was some delay which was troubling the applicant.

11. In the result, no case for bail is made out. Therefore, following order.

Order.

The application is rejected.

[A. M. BADAR, J.]