

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

BAIL APPLICATION NO. 1534 OF 2018

Nikhil Santosh Gavali & Anr.

....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Aniket U. Nikam for the applicants.

Mrs. J.S. Lohkare, APP for the State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 28th AUGUST, 2018.**

P.C.:

. This is an application for bail filed by the aforesaid applicants who have been arrested in C.R.No.I-207/2016 registered at Gangapur Police Station, Nashik for offences punishable under sections 201, 302 r/w. 34 of the Indian Penal Code.

2. Heard Mr. Aniket U. Nikam, learned counsel for the applicants and Mrs. J.S. Lohkare, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The afore stated crime was registered pursuant to the first information report dated 18/10/2016 lodged by one Balu

Suryawanshi, the father of the deceased Aakash. The first informant had alleged that on 18/10/2016 at about 02:00 p.m., the deceased has left his house with his friends Satish Garud, Rajabhau Katare, Rupchand Kadade alias Khopdya, Raju Chintaman Thombre. Said Aakash did not return home and on 19/10/2016, the first informant received a phone call from the police station asking him to identify a body which was found on the banks of river Godavari. The first informant identified the body as that of his son Aakash. There were several injuries on the body. He, therefore, lodged the FIR against the applicants for committing murder of his son Aakash.

4. The body was sent for post mortem and post mortem report *prima facie* reveals that the death was due to stab injuries on neck and abdomen. The records, thus *prima facie* reveal that the death was homicidal.

5. The statements of some of the witnesses *prima facie* reveal that the deceased was seen in the company of Rajabhau Katare, Rupchand Kadade alias Khopdya and Satish Garud. Hence, these three persons were arrayed as accused. Subsequently, they have been released under section 169 of Criminal Procedure Code.

6. The records *prima facie* reveal that one of the accused persons namely Jitendra Dandekar @ Jeetu was arrested and his confessional statement was recorded under section 164 of Criminal Procedure Code. In the said statement, he has stated that in the month of October, 2016, he had stayed with the applicant Kalpesh Choudhary at Jalgaon. Thereafter, they proceeded towards house of the applicant Nikhil Gavali and that he alongwith these two applicants and three other friends proceeded towards CBS Nashik. One more person joined them and that the applicants and the others told him that the said person had to be dropped at Gangapur. When they reached at Gangapur, the applicants, Shahrukh and Vicky got out of car to drop the said person and thereafter the applicants, Shahrukh, and Vicky returned to the car. When they were on the way to Nashik, Shahrukh and Vicky threw one bag on the road and when questioned, they told him that they had thrown the garbage. He had stated that after Shahrukh was arrested, he had disclosed his name and the names of the applicants to the police. He claims that Kalpesh later told him that last year when they had hired his car, he alongwith Nikhil, Shahrukh and Vicky had committed murder of their friend.

7. It is seen that apart from the aforesaid confessional statement,

which is exculpatory in nature, there is no other *prima facie* material on record to link the applicants to the aforesaid crime. Drawing my attention to the confessional statement, Mr. Aniket U. Nikam, the learned counsel for the applicants submits that the answer to question no.15 clearly indicates that the co-accused Jitendra had made a confessional statement. He has placed on record the judgment of the Division Bench of this Court in ***Mohd. Samir Mohd. Juber Shaikh v/s. The State of Maharashtra reported in 20171 Vol I MhLJ (Cri) 641;*** wherein it has been observed that when the statement of the accused is wholly or partly exculpatory, it cannot be used against co-accused. Where an accused pleads innocence and throws the blame on the co-accused, such statement cannot be termed as confession of that accused and cannot be used against co-accused.

8. I have perused the said confessional statement which *prima facie* appears to be exculpatory. Hence *prima facie* the said statement cannot be used against the co-accused. Considering this fact and there being no *prima facie* material to link the applicants to the crime, in my considered view, the applicants are entitled for bail. Hence, I pass the following order :-

- (a) Bail Application is allowed.
- (b) The applicants are ordered to be released on bail in C.R. No.I-207/2016 on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) each with one or two solvent sureties in the like amount, to the satisfaction of Sessions Judge, Nashik.
- (c) The applicants shall furnish their permanent address and temporary address, if any and furnish their contact details to the concerned Court.
- (d) The applicants shall not change their residential address without prior intimation to the Investigation Officer.
- (e) The applicants shall not interfere with the first informant and other witnesses in any manner.

(SMT. ANUJA PRABHUDESSAI, J.)