

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

BAIL APPLICATION No. 2019 of 2018.

Tushar Bapurao Gaikwad	..Applicant.
Vs	
State of Maharashtra	..Respondent.

Mr. Ujwal Agandsurve, Advocate for the applicant.
Mr. S.S. Pednekar, APP for the State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATE : 19TH SEPTEMBER, 2018**

P.C:-

1) This is an application for bail, under Section 439 of Criminal Procedure Code, filed by the aforesaid applicant who is facing trial in Sessions Case No. 220 of 2017 pending on the file of learned Sessions Judge, Solapur. The said case arises from Crime No. 72 of 2017, registered at Kamati Police Station, Taluka Mohol, District Sholapur, for offence punishable under Section 302 of Indian Penal Code.

2) Heard Mr. Agandsurve, learned counsel for the applicant, Mr S.S.Pednekar, learned APP for the State. Perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3) The learned counsel for the applicant submits that there is no prima facie evidence to show that the applicant herein was working as a cleaner on the truck, wherein the dead body of the deceased was found. He further submits that even otherwise it is not a case falling under Section 302 of IPC as the crime was committed on the spur of moment.

4) Per contra, the learned APP submits that the statement of the owner of the vehicle clearly indicates that the applicant was on duty on the said truck. The statement of the wife of the deceased also indicates that the applicant was in company of the deceased. He therefore contends that in terms of Section 106 of the Indian Evidence Act, 1872, the onus is on the applicant to explain the circumstances which are exclusively within his knowledge.

5) I have perused the record and considered the submissions advanced by the learned APP for the State. The record prima facie reveals that on 1/5/2017 at 5:45 p.m. one Somling Sidhappa Koli informed the police that some foul smell was emanating from the truck, which was parked on the road by the side of his 'Dhaba' (road side food stall). On the basis of the said information, the police visited the site. They found one

truck No. GJ-03-AW-8239 was parked by the side of the road. The door of the truck towards driver's side was locked from outside, whereas the door towards the cleaner's side was locked from inside. The police broke open the lock and found a dead body of a male person inside the cabin of the truck. They verified the driver's licence and other documents, confirmed the identity of the deceased as Danial Shamrao Kharat and thereafter reported the matter to Kamati Police Station.

6) Upon being informed about the death of his son, the father of the deceased, lodged the first information report against the applicant FOR causing death of his son. He stated that his son Danial was working as a driver, while the applicant was employed as a cleaner, with Vivek Transport at Gujarat. He claimed that Danial and the applicant had gone to deliver some goods. He has stated that he had spoken to the deceased on phone and he had told him that the applicant was along with him. The wife of the deceased had spoken to him last on 29/4/2017 and that the deceased Danial had told her that they were near Lohagaon and would reach the village within two to three days. The deceased had also told her that the applicant was along with him.

7) The statement of witness Ashwinbhai, the owner of the said truck, also prima facie reveals that the deceased was the driver of the truck, whereas the applicant was working as a cleaner. His statement prima facie also reveals that on 19th April, 2017 the deceased Danial and Tushar Bapurao had gone with the said truck to deliver tiles. He has stated that he had last spoken to Danial on 28th April, 2017.

8) The statement of Mangal, the wife of the deceased prima facie reveals that she had last spoken to the deceased on 29th April, 2017 at 4:00 p.m. and that he had told her that he had reached Lohagaon and would reach home within two to three days. Her statement also indicates that the deceased had told her that the applicant was with him at the relevant time.

9) The postmortem report of the deceased shows that the body had already decomposed. The postmortem report also indicates that there were fractures on occipital region of the head. The material on record thus prima facie reveals that the applicant and the deceased were together till 29/4/2017 at 4:00 p.m. Decomposed body of the driver Danial was found in the cabin of the truck on 1/5/2017. The death of Danial was homicidal. The applicant who was all along present with the

deceased had not reported to any one or to the police about the death of Danail or cause of his death, which prima facie, were the circumstances, which were well within his exclusive knowledge. Furthermore, the spanner which was used as a weapon of assault has been recovered at the instance of the applicant.

10) Thus, there is prima facie material to show the involvement of the applicant in commission of the crime that is of a serious nature. The contention of the learned counsel for the applicant that the incident had occurred on the spur of moment cannot be accepted at this stage and it would be a matter of defence which will have to be established on merits of the matter.

11) Under the circumstances and in view of the discussion supra, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)