

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

CRIMINAL BAIL APPLICATION NO. 2302 OF 2018

Nilesh Gangaram Godse

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. S.V. Marwadi for the applicant.

Mr. A.R. Kapadnis, APP for the Respondent-State.

Mr. Umaji Kadam, PSI Goregaon Police Station is present.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 1st NOVEMBER, 2018.

P.C.

1. Applicant is arrested on 10th October, 2013 in connection with C.R. No. 371 of 2013 registered with Goregaon Police Station for the offence punishable under Sections 302, 404, 201, 120B read with 34 of Indian Penal Code.

2. On 8th October, 2013 informant received the information that one person is lying near Ankur Building at Prem Nagar, Goregaon West. After receiving the information, the informant along with other staff went to the spot and found one injured person lying there. The injured was taken to hospital where he was declared dead. During the course of investigation, the prosecution has collected evidence and it was alleged that deceased was

identified as Mohd. Babu Abdul Hasan Choudhary. The accused had assaulted the deceased as a result of which he succumbed to the injuries. It is alleged that statement of the witnesses reveal that the deceased had evil eye on the wife of one of the accused. All of them were together on 7th October, 2013. They were present in the room which is the place of incident. There was a quarrel between them. Subsequently, deceased was found missing and his body was found at the place as stated above. On completing investigation, chargesheet has been filed.

3. Applicant had preferred an application for bail before the Sessions Court which has been rejected on 15th May, 2018. Learned counsel for the applicant submitted that there is no evidence to show involvement of the applicant in the crime. Case of the prosecution is based on circumstantial evidence. There is no eye witness to the incident. The circumstances relied by the prosecution to show involvement of the applicant are weak in nature. Co-accused who were allegedly last seen with the deceased are granted bail by this Court and the Sessions Court. The applicant is languishing in jail without trial since last five years. The applicant cannot be subjected to prolonged custody only on the basis of inferences.

4. Learned APP submitted that there is strong evidence against the applicant. Statement of the witnesses indicates that the applicant was in company with the deceased. The circumstantial evidence show the complicity of the applicant in the crime. The statement of the owner of the house which was occupied by the deceased, wife of one of the accused, mother of the accused, neighbour and friend of the applicant in their statement disclosed the involvement of the applicant in the crime. He was last seen in the company of the deceased. The applicant has made extra judicial confession to his girl friend. Applicant is involved in serious crime of murder. It is thus prayed that applicant be rejected. The case of the accused who were granted bail can be distinguished and the applicant is not entitled for bail.

5. I have perused the chargesheet. The prosecution case which is apparent from the statement of Savita Godse recorded during the course of investigation is that the deceased was residing in the adjacent room to her residence. She is the wife of accused Santosh Godse. Deceased used to stare at her. She could feel his evil-intentions. He used to deliberately strike conversation with her. She has made complaint about his conduct to her husband (accused No.2 Santosh Godse). Applicant is her brother-in-law.

Thus prosecution case proceeds on the basis of motive due to conduct of deceased. There was a quarrel between him and all accused which has allegedly resulted in the incident of murder. There is no eye witness to the incident. The entire case is based on circumstantial evidence. The prosecution has to establish the chain of circumstances to show the link of accused in commission of the crime. The trial Court would look into this aspect while appreciating the evidence. However, it can be seen that except the evidence putforth by the prosecution, there is no other strong circumstance to show the involvement of the applicant. In any case, it is the prosecution case that all accused were at the place of incident and they were in the company of the deceased and were last seen together. The statement of the owner of the house recorded on 14th October, 2013 refers to the presence of the accused and the deceased in the room. The statement of the mother of accused was also recorded. It does not travel beyond the inference. The statement of Ranjana refers to the fact that she heard some quarrel between the accused. Assuming that said circumstances are true, it will have to be inferred that all accused were together. There is no witness who had seen any person assaulting the deceased. The other accused who were last seen

together with the deceased were granted bail. The prosecution is relying on the alleged extra judicial confession of the friend of the applicant. In the light of the nature of evidence collected by the investigating machinery, applicant cannot be subjected to further custody on the basis of evidence of extra judicial confession made by him to his girl friend which by nature is weak piece of evidence. I have perused the order passed by this Court granting bail to the co-accused.

6. While granting bail to co-accused Shankar Godse, the Sessions Court has observed that *prima-facie* there is no evidence to show that he had played any active role to commit murder of the deceased. The case of the prosecution against him is that he was conspirator to commit the murder of the deceased. While granting bail to Santosh Godse it was observed that there is no direct evidence on record. No doubt there is statement of witnesses about accused making false statement for taking the vehicle. But there is no other incriminating evidence against him. There is recovery of weapon from the applicant. Apparently, recovery was made from the open place. While granting bail to the co-accused Satyaprakash Yadav, this Court had observed that accused is behind bar for about four years. It was also noted that

prosecution is relying on two circumstances viz finding of the blood on clothes of the said accused and last seen together with the deceased. It was also observed that record indicates that accused had suffered injury and his own blood stains were found on his clothes at the of seizure. While granting bail this Court has also taken into consideration that he is in custody since last four years.

7. Learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in the case of **Balkrishna Tukaram Angre Vrs. The State of Maharashtra in Criminal Appeal No. 1704 of 2017**. In the said decision it was observed that case of the prosecution rests on circumstantial evidence and the accused has been in custody for fifteen months.

8. Applicant is in custody since last five years. Considering the aforesaid aspects, bail can be granted to applicant. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application is allowed;
- ii. The applicant be released on bail in C.R No. I-371 of 2013 registered with Goregaon Police Station, Mumbai on his furnishing P.R Bond of Rs.25,000/- with one or two solvent local sureties in

the like amount;

- iii. After his release from the jail, the applicant shall attend the Goregaon Police Station once in month i.e on every 1st Monday of the said month between 11.00 a.m. to 2.00 p.m;
- iv. The applicant shall also attend all the dates before the Trial Court;
- v. Any two consecutive defaults in complying with the aforesaid conditions, shall attract the provisions of cancellation of bail;
- vi. The applicant shall not tamper with the evidence and/or influence the prosecution witness;
- vii. Criminal Bail Application is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.11.03
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