

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

BAIL APPLICATION NO. 789 OF 2019

Nikhil Uddhav Bhilare ...Applicant

Vs.

The State of Maharashtra ...Respondent

WITH

CRIMINAL APPLICATION NO. 602 OF 2019

Subhash Ramchandra Bhosale ...Applicant
(intervener)

IN THE MATTER BETWEEN

Nikhil Uddhav Bhilare ...Applicant
(Org. Accused)

Vs.

The State of Maharashtra ...Respondent

Mr. Rahul K. Dhaygude for Applicant.
Mr. S. H. Yadav APP for the State/ Respondent.
Mr. Shailesh D. Chavan for Intervenor.

CORAM : PRAKASH D. NAIK, J.

DATE : 14th November 2019

PC :

1. The Applicant is seeking Bail in connection with CR. No. 393 of 2018 registered with Satara Taluka Police Station for offences punishable under Sections 302, 364, 201, r/w. 34 of Indian Penal Code (for short 'IPC'). The FIR was

lodged on 4th August, 2018. The alleged incident occurred on 1st August, 2018.

2. The prosecution case is that, the deceased Amit Bhosle was student, he was close friend of accused no. 1 Yogesh Bhillare. The First Information Report was lodged by the brother of the deceased. It is alleged that Yogesh Bhillare suspected that the deceased Amit was having illicit relationship with his wife. He was assaulted by Yogesh Bhilare, in the month of May 2018. In June, 2018 another attempt was made by Yogesh Bhilare to push Amit from his motorcycle below the truck coming from opposite direction. The deceased was found dead along with his motorcycle on 1st August, 2018. On enquiry with friend of deceased, complainant was informed that on 31.07.2018, at about 8.30 p.m. one male and female had come to meet deceased. He took key of motorcycle and thereafter did not return to his room. Thereafter the complainant watched CCTV footage, which showed that Amit was with Yogesh and his wife Archana Bhilare and they left on motorcycle. It was suspected that they have killed Amit Bhosle. The Applicant was arrested on 05.08.2018. Co-accused Yogesh Bhilare and his wife Archana Bhilare were also arrested. The statements of various persons' were recorded and charge-

sheet was filed.

3. The learned counsel for the Applicant submits that, there is no eye witness to the incident. The prosecution case is based on the circumstantial evidence. The Applicant is arrested on suspicious. There is no incriminating recovery from the Applicant. He is in custody from 05.08.2018. The co-accused Archana Bhilare has been granted bail. Applicant is not named in FIR. Initially, accidental death was registered at Satara Police Station. No blood stained cloths or weapon is recovered from applicant. There is no motive for applicant to participate in crime.

4. Per contra the learned APP and the learned Advocate for the intervener submitted that, there is overwhelming evidence against the Applicant. The statements of witnesses Bapuji Kadam and Datta Jadhav shows involvement of the applicant in the crime. He was found present with the co-accused Yogesh Bhilare odd hours. CDR report indicates that there were calls between applicant and accused Yogesh Bhilare. Both the accused had killed the deceased and tried to show as if it was the case of the

accident. The co-accused Archana Bhilare was granted bail considering her role and since she was lady.

5. I have perused the documents on record. Undisputedly, there is no eye witness to the incident. Initially, the accidental report was filed. During the course of investigation, the involvement of the applicant and other accused was allegedly disclosed. The prosecution is relying on the statement of Datta Jadhav. The statements of the said witnesses was recorded on 15.08.2018. The said witness has stated that, he received call from phone of Balkrishna Bhilare at about 2.42 a.m. and caller informed him that he is Yogesh Bhilare. There is snag in his motorcycle and he has walked up to Pawan Dhaba. He requested the witness to pick him. The witness met Yogesh near Canal. He was with applicant. He dropped them near house of Yogesh at about 6.36 a.m. Yogesh again called and requested for giving his motorcycle that he can bring his motorcycle. Yogesh told the witness that he would sent Nikhil to pick up his motorcycle. The witness was in his agricultural field and he told him that motorcycle is at home. Subsequently, Yogesh told him that motorcycle is at his home. The witness told his son to bring motorcycle.

This witness has not stated in clear terms whether applicant had pricked up his motorcycle after receiving call from Yogesh. He further stated that Yogesh came to his house and told him that he has killed Amit Bhosle. He did not disclose this fact to any person. According to him, he was scared. It is relevant to note that, according to version of this witness Yogesh made extra judicial confession to him. In this said confession, Yogesh had not stated that he alongwith applicant had killed deceased. He is not eye-witness to incident. Similarly, the statement of Bapuji Kadam was recorded belatedly on 12.09.2018. In his statement he has stated that, in the night of 31st July, 2018 at about 11.30 p.m., he had seen the applicant and Yogesh Bhillare and Amit Bhosle together on motorcycle. On 04.08.2018, after reading newspaper, he learnt that Amit had been killed by Ramesh Bhilare and Nikhil Bhilare. He had informed the fact that he had seen three of them on motorcycle to the uncle of Amit, Shyamrao Bhosle. Statement of Shyamrao was recorded on 05.08.2018. He has not stated that Bapuji Kadam has provided him information. Admittedly, there is no incriminating recovery from the applicant. There is no recovery of blood stained clothes from applicant. The entire case is based on the

circumstantial evidence and the statements of the two witnesses which were recorded belatedly, which cannot be said as a strong circumstance to show involvement of the applicant. The applicant had no motive to kill the deceased. The CDR relied by prosecution do not show the location. Hence, considering the aforesaid circumstances case is made out for grant of bail. Hence, the order as follows.

ORDER

- (i) Bail Application No. 789 of 2019, is allowed;
- (ii) The applicant-Nikhil Uddhav Bhilare is directed to be released on bail in connection with C.R. No. 393 of 2019, registered with Satara Taluka Police Station, on furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report Satara Taluka Police Station, once in a month on first Saturday of every month between 10:00 a.m. to 2:00 p.m. till further order;

(iv) Applicant shall not tamper with the evidence;

(v) Bail Application stands disposed of accordingly.

(vi) Criminal Application 602 of 2019 for intervention stands disposed of.

(PRAKASH D. NAIK, J.)