

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

CRIMINAL BAIL APPLICATION NO.999 OF 2019

Vijay Mahadev Dafade

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Ganesh Gole i/b. Shirodkar Ateet, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 30th JULY, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.155/18 registered with Murgud Police Station, Kolhapur, under sections 302, 201 of the Indian Penal Code.
2. The FIR is lodged on 13/11/2018 by Sagar Sadashiv Devadkar, who was younger brother of the deceased Mahadev Sadashiv Devadkar. He has stated in his FIR that the deceased

was working with the present Applicant and he was looking after watering the agricultural field of the Applicant. The deceased was addicted to liquor and he was not regular in attending his work. Therefore the Applicant was unhappy with him and had assaulted him in the past. The first informant had told the Applicant that he would make payment on behalf of the deceased. The Applicant had declined his offer and had told the first informant that he would see that the deceased worked for him, otherwise he would not leave him.

3. On 12/11/2018, the deceased had left his house in the morning at 07.00 a.m. and thereafter he did not return home. On 13/11/2018 the informant's nephew informed him that the dead body of the deceased was found in an agricultural field in village Nanibai Chikhli. On this basis, the FIR is lodged. Because of the conduct of the Applicant and the past dispute with the deceased, in the FIR the first informant had expressed strong suspicion against the present Applicant.

4. The Applicant was arrested on 13/11/2018 itself. The investigation was carried out and the charge-sheet was filed. Since his arrest the Applicant is in custody.
5. Heard learned Counsel Mr.Ganesh Gole for the Applicant and learned APP Ms.S.S. Kaushik for the State.
6. Mr.Gole submitted that there are no eyewitnesses to the incident. He submitted that the case is based purely on circumstantial evidence. The main circumstance against the present Applicant is the statement of two witnesses, who had seen the deceased in company of the Applicant at around 04.30 p.m. on 12/11/2018. He submitted that the dead body was discovered in a different field at some distance and there is no proximity of time and place where the deceased was last seen in the company of the Applicant. He submitted that the other circumstance of recovery of rope, sickle and a mobile phone is not connected with the incident. He submitted that therefore the chain of circumstances is not complete and even at the stage of

consideration of bail, this important factor is in favour of the Applicant.

7. As against these submissions, the learned APP submitted that the chain of circumstances is completed because the Applicant was seen together with the Applicant and thereafter the deceased was not seen alive. She submitted that the recovery and incriminating articles at the instance of present Applicant is also a relevant incriminating circumstance which completes the chain of circumstances. She submitted that the FIR and statement of the family members of the deceased show that there was previous dispute between the Applicant and the deceased and this was the motive for commission of murder.

8. I have considered these submissions. The FIR is based on suspicion. The FIR does not mention that the Applicant had threatened the deceased and there was a dispute between them because the deceased was irregular in attending his duties, because of which the Applicant's work was hampered. Similar

statement is given by the wife Kalpana Devadkar and mother Muktabai Devadkar of the deceased. However, this by itself does not show that there was a strong motive for the Applicant to commit murder of the deceased. The post-mortem notes show that the deceased had died due to strangulation. The cause of death is mentioned as "Death due to Asphyxia due to strangulation". There are six surface injuries in the nature of CLW, contusions and bruises, besides the injuries indicating strangulation. It appears that there was some struggle before the deceased had met his death. However, arrest Panchanama of the Applicant does not show that the Applicant had suffered any injuries indicative of the struggle.

9. The important circumstance in this case is the versions of two witnesses namely Savitri Patil and Malubai Patil. Both of them were residents of Mhakve. They had seen the deceased and the Applicant together at 04.30 p.m. on 12/11/2018 near the field of the Applicant. Since the deceased was working in the field of the Applicant, the Applicant and deceased having been

seen together near the Applicant's field is not an unusual circumstance. The witnesses had seen them together at 04.30 on 12/11/2018. The statements of these witnesses are recorded on 16/11/2018 and 20/11/2018 respectively i.e. after arrest of the Applicant. There is no explanation as to why these witnesses had not approached anybody informing that they had seen the deceased together with the Applicant. Both these witnesses had come to know that the deceased had died and his dead body was found on 13/11/2018 itself. They were aware of this fact on 13/11/2018. The dead body was discovered in a different village in an agricultural field at about 09.15 a.m. Thus there is neither proximity of time nor proximity of place between these witnesses seeing them together and discovery of the body. Therefore the important connection between these circumstances is broken.

10. There is one more circumstance mentioned in the charge-sheet and that is the recovery of rope, sickle, Indica car and a mobile phone at the instance of the present Applicant.

11. The recovery of Indica car is hardly of any consequence because it was his own car. The rope and sickle are common articles and there is nothing to show in the entire charge-sheet that they were connected with the offence. The recovery of mobile phone is also not connected with the offence, because there are no witnesses identifying that the mobile was used by the deceased.

12. In view of above discussion, the circumstances against the present Applicant are very weak and therefore he deserves to be released on bail during pendency of the trial. Needless to mention that these observations are restricted for the purpose of deciding this bail application only. The trial Court shall not be influenced by any of these observations and shall decide the matter on its own merits after recording of the evidence. With these observations application is allowed by the following order:

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.155/18 registered with Murgud Police Station, Kolhapur, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)