

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

BAIL APPLICATION NO.1059 OF 2019

Vijay @ Gambhir Sambhaji Khot Applicant

versus

The State of Maharashtra Respondent

.....

- Mr. Ganesh Gole I/b. Shirodkar Ateet, Advocate for Applicant.
- Mr. Prashant Jadhav, APP for the State/Respondent.
- Mr. N. K. Karche, PSI, Kagal Police Station, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.157/2018 registered at Kagal Police Station, Kolhapur under Sections 302 r/w. 34 of IPC.

2. The prosecution case is in respect of murder of one Suryakant Vithal Khot. It is the prosecution case that the applicant was having extra marital affair with Suryakant's wife and because of that his murder was committed. Initially, an accidental death report was lodged by the brother of the deceased i.e. Chandrakant

Vithal Khot on 24/9/2018. On that day, in the morning he was informed by neighbour Bajirao Khot that his brother Suryakant was taken to Kagal Hospital. When he reached the hospital, he found that Suryakant was dead. He came to know through his cousin Dattatray Khot and one Pandurang Khot that present applicant was having affair with Suryakant's wife. His brother was seen hanging from a tree. On that basis, the accidental death report was lodged. Subsequently, on 29/9/2018, Chandrakant gave his FIR against the present applicant which mentioned that the applicant was having extra marital affair with the wife of the deceased and because of that the deceased had committed suicide. The post mortem was conducted on 24/9/2018 itself. The cause of death was not mentioned and the opinion was reserved. The dead body was having four injuries. Out of which, first ligature mark which was horizontally running above thyroid cartilage about 34 cm in length, was completely encircling the neck. The cause of death was not mentioned as viscera was preserved for chemical analysis and the opinion was reserved. Cause of death was found as death due to strangulation. Thus, case did not

remain under Section 306 of IPC and subsequently it was replaced by Section 302 of IPC. The applicant was arrested on 29/9/2018 and since then, he is in custody.

3. Heard Mr. Ganesh Gole, Ld. Counsel for the Applicant and Mr. Prashant Jadhav, Ld. APP for the State.

4. Mr. Gole submitted that initially the case was that the deceased had committed suicide because of extra marital affair the applicant was having with his wife. He submitted that the post mortem notes indicate that it could be a case of hanging and not of strangulation. He further submitted that the only evidence against the present applicant is in the form of statement of one Avishkar Khot. Shri. Gole submitted that statement of this witness is recorded belatedly on 3/11/2018 and therefore, his evidence not reliable. He further submitted that the entire story narrated by him is improbable. His statement is not reliable and therefore, applicant deserves to be released on bail.

5. As against these submission, Ld. APP submitted that post mortem notes as well as opinion in that behalf has clearly showed it is a case of murder. The statement of Avishkar Khot is sufficient to bring home the guilt of the present applicant. The offence is serious and therefore, bail should not be granted to him.

6. I have considered these submission. The chargesheet does not show that there are witnesses to the fact that the applicant was having extra marital affair with wife of deceased. There are some photographs which were found in the applicant's mobile phone which showed them in intimate positions. The most important factor in this case is the statement of witness Avishkar Khot. He has stated that on the day of incident i.e. between the night of 23rd and 24/9/2018, he had seen the deceased alongwith the present applicant. Both of them were travelling in a tempo. This witness was asked by the applicant to ride his two wheeler. The deceased and applicant were consuming liquor. At around 4.00 a.m., in the morning, the tempo was taken near Ekondi diversion. There was a stream nearby. The applicant and the deceased went towards that stream. This witness waited for them

to come back. After some time, the applicant alone returned. He was having a big rope in his hand. He told this witness that he had committed murder of Suryakant and that this witness should not tell it to anybody. After that both of them came back to Randivewadi. This witness was scared and therefore, did not inform this to anybody.

7. This statement is on two circumstances. 'Last seen together' soon before the incident and extra judicial confession. Both these circumstances are strong enough by themselves in the light of opinion regarding cause of death. Undoubtedly, the deceased had died homicidal death. The second circumstance was that the applicant was seen in the company of the deceased just before the incident. He had also confessed to having committed the crime to this witness Avishkar Khot. These are strong circumstances which point to the involvement and guilt of the present applicant. Therefore, no case for granting bail to the applicant is made out. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)