

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

CRIMINAL BAIL APPLICATION NO. 1100 OF 2019

Mr. Anil Sarjerao Chavan	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Umesh Mankapure, Advocate for the Applicant.
Mr. S. H. Yadav, APP for the State/Respondent.

**CORAM :SARANG V. KOTWAL, J.
DATE :26th SEPTEMBER, 2019**

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 187 of 2018 registered with Shirala Police Station, Dist. Sangli, under sections 302, 364 and 201 of the Indian Penal Code. The applicant was arrested on 12/11/2018 and since then he is in custody. The investigation is over and the chargesheet is filed.

2. The FIR was registered on 10/11/2018 on the statement given by Uttam Ghanvat. He was husband of the deceased Suvarna. He has stated that, his family was acquainted with the applicant. The applicant used to regularly visit the

informant's house and he developed illicit relations with the deceased Suvarna. On that count, there used to be frequent quarrels between the informant and his wife Suvarna. A few months prior to the incident, the informant had caught Suvarna while talking with the applicant on her mobile phone. The informant had taken away her mobile phone. The other family members had told her to stop this relation. Thereafter, according to the informant, Suvarna had stopped meeting the applicant. On 09/11/2018, when he returned home at around 7.00p.m., Suvarna was not in the house. He asked his daughter Shreya. She told him that Suvarna had left the house with informant's son Shreyas for going to gas agency. At about 9.00p.m. the informant's cousin Bharat brought Shreyas home. Shreyas informed all of them that the deceased Suvarna had left with the applicant in his car. Shreyas was left near Kurlap Phata. He was brought home by Bharat. The informant made inquiries with the villagers and relatives, but he did not get any information about Suvarna. On the next day morning, at 10.00a.m. he received a WhatsApp message showing photograph of Suvarna's dead body. Dead body

was found within the limits of Kapri village. He went there and confirmed that it was her dead body and thereafter he lodged the FIR. Dead body was found at around 7.30a.m. on 10/11/2018 by one Sangram Kumbhar. On this basis, the FIR was lodged.

3. The Postmortem notes show that she had suffered five injuries in the nature of abrasion and contusion, mostly on the upper part of the body. One abrasion was on the right leg. The cause of death was mentioned as, "Death due to intracerebral hemorrhage however viscera was preserved." As the applicant was the prime suspect, he was arrested as mentioned earlier. The investigation was conducted and the chargesheet was filed.

4. Heard Shri. Umesh Mankapure, learned counsel for the applicant and Mr. S. H. Yadav, learned APP for the State.

5. Shri. Mankapure submitted that there are following circumstances against the applicant; (i) last seen together, (ii) recovery of two mobile phones and a Maruti Car and, (iii) motive. He submitted that, neither of these circumstances is strong enough to complete the chain of circumstances. He submitted that the mobile phones recovered at his instance were in his own name and

CDR shows long conversations between these two numbers. The prosecution case is that the deceased had stopped meeting the applicant and has severed her relationship with him and that the applicant was annoyed. This motive is belied by the fact that there used to be regular conversations telephonically between them. He, therefore, submitted that circumstance of alleged motive is not really incriminating against the applicant. He submitted that the only circumstance which the prosecution is seriously alleging against the applicant is about the theory of last seen together with the deceased. He submitted that in many cases, the Hon'ble Supreme Court has held that, such circumstance by itself cannot mean that the accused had committed that offence. It is a weak piece of circumstance. In support of his submission, Shri. Mankapure relied on the Judgment of the Hon'ble Supreme Court passed in the case of *Anjan Kumar Sarma and Others Vs. State of Assam*¹.

6. Learned APP, on the other hand, submitted that the circumstance of last seen together is established through the statement of son of the deceased. At this stage, his statement

¹ (2017) 14 Supreme Court Cases 359

cannot be doubted. He further submitted that only because deceased had not consented to continue with the relationship, she was murdered by the applicant. Therefore, even the motive is established. He added that the recovery of mobile phones supports the case that one of the handsets was given to the deceased by the applicant, therefore, this also an incriminating piece of circumstance.

7. I have considered all these submissions. In the entire charge-sheet there is no direct material to show as to how deceased was murdered. There are five injuries on the dead body. The apparent cause of the death was because of intracerebral hemorrhage, that means she had suffered some injury on her head. No weapon is recovered at the instance of the applicant or no weapon is found otherwise. Shri. Yadav submitted that the prosecution case is that the applicant banged her head against the car, however, panchanama in respect of recovery of that car does not show any special marks or blood stains on the car.

8. The recovery of mobile handsets at the instance of applicant by itself may not be an incriminating because, according

to the prosecution case, they belonged to him. One of the handsets was given to the deceased, but then that only shows that they were still in a relationship. The only circumstance which needs serious consideration is the theory of last seen together with the deceased. For that purpose, the prosecution is relying on the statement of the deceased's son Shreyas. At this stage, there is no reason to doubt his version. His statement is that, at about 7.00p.m. the deceased had left in a car with the applicant. That was at 7.00p.m. on 09/11/2018. The dead body was found on the next day at around 7.30a.m. Thus, there was a time gap of more than 12 hours. Shri. Mankapure submitted that the dead body was found at a distance of 14Km. from the place from where they had left together by leaving her son on the street. Thus, there is neither proximity of time nor proximity of distance in respect of theory of last seen together and finding of the dead body. The time of death cannot be established with reasonable certainty unless the Medical Officer is examined or cross-examined in that behalf. As rightly submitted by Shri. Mankapure, Hon'ble Supreme Court in the case cited supra in para 19 has observed thus:-

“19. The circumstance of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In Kanhaiya Lal V. State of Rajasthan, (2014) 4 SCC 715: (2014) 2 SCC (Cri) 413, this Court held that: (SCC p.719, paras 12 & 15).

“12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

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15. The theory of last seen – the appellant having gone with the deceased in the manner noticed hereinbefore, is the singular piece of circumstantial evidence available against him. The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial relationship between the accused and the deceased for a long time. The fact situation bears great similarity to that in Madho Singh v. State of Rajasthan (2010) 15 SCC 588 : (2012) 4 SCC (Cri) 767.”

9. Hence, considering all these aspects, even at this stage, the case against the applicant appears to be weak. The conduct of the first informant also does not appear to be very natural because

there is nothing to show that the informant and his family members had gone to the house of the applicant and had inquired with the family members of the applicant, if they were aware that the deceased had left the place with the applicant. Considering all these aspects, at this stage, sufficient doubt is created in favour of the applicant. However, all these factors will have to be independently gone into by the trial court without being influenced of any of these observations. In the circumstances, I am inclined to grant bail to the applicant.

10. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 187 of 2018 registered with Shirala Police Station, Dist. Sangli, the applicant is directed to be released on bail 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.)