

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.571 OF 2019

NANASAHEB PIRAJI DOKE

)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.A.P.Mundargi, Senior Counsel a/w. Mr.Ritesh Thobde and Mr.Sagar Tambe, Advocate for the Appellant.

Mr.Aniket Nikam i/b. Mr.Vivek Arote, Advocate for Respondent No.2.

Mrs.M.M.Deshmukh, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

**DATE : RESERVED ON 31st JULY 2019
PRONOUNCED ON 2nd AUGUST 2019**

JUDGMENT :

1 By this appeal, appellant/accused Nanasaheb Piraji Doke is challenging the order dated 30th March 2019 passed by the learned Special Judge, Pandharpur, thereby rejecting Criminal Bail Application No.139 of 2019 filed by the appellant/accused for

seeking bail in Crime No.430 of 2018 registered against him for offences punishable under Sections 363, 366, 302, 201 read with 34 of the Indian Penal Code, under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, under Section 3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 as well as under Section 3(2)(va) and 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard Mr.Mundargi, the learned senior counsel appearing for the appellant/accused. He vehemently argued that there is no legal evidence to connect the appellant/accused with the crime in question, and therefore, he is entitled to be released on bail. The learned senior counsel argued that statement of Pradeep Shivsharan, who happens to be son of accused Bharat Shivsharan, reflecting extra judicial confession, is not worth relying as this witness was knowing intention of accused to eliminate deceased Pratik Shivsharan on 26th October 2018 itself.

He came to know about the murder on 1st November 2018 whereas his statement reflecting alleged extra judicial confession came to be recorded belatedly on 27th November 2018. Similarly, in submission of the learned senior counsel, statement of Santosh Kalubarme reflects that at the time of the alleged incident of murder of Pratik Shivsharan, the appellant/accused was admitted as an indoor patient in the hospital, and as such, he had no role to play in the incident. Extra judicial confession reflected from the statement of Santosh Kalubarme and Sanjay Doke came on record after arrest of the appellant/accused. It is further argued that so called recovery effected pursuant to Section 27 of the Evidence Act from the appellant/accused is not connecting him to the crime in question. With this, the learned senior counsel argued that the appellant/accused, who was arrested on 11th January 2019, deserves to be released on bail during pendency of the trial.

3 The learned APP as well as the learned counsel appearing for respondent no.2/First Informant opposed the appeal and supported the impugned order by contending that extra

judicial confession made by accused Bharat Shivsharan so also by the appellant/accused is gaining corroboration from other evidence collected by the prosecution during investigation. The case is based on circumstantial evidence and statements of witnesses namely Audumbar Patil and Babulal Mullani candidly show that accused Bharat Shivsharan alongwith juvenile in conflict with law Vaibhav Shivsharan kidnapped Pratik Shivsharan and committed his murder. Our attention was also drawn to the Inquest Panchnama and statements of other witnesses to demonstrate that accused Bharat Shivsharan had close relations with appellant/accused Nanasaheb Piraji Doke and both of them had indulged in evil and aghori practices and Pratik Shivsharan was murdered for sacrificing him to Vetar Baba.

4 We have carefully considered the rival submissions and also perused the charge-sheet. Pratik Shivsharan – a child of 9 years of age, went missing from the playground of marathi school of Village Machnur on 27th October 2018. His father / respondent no.2 Madhukar Shivsharan lodged First Information

Report (FIR) alleging kidnapping by unknown persons on 28th October 2018. Ultimately, dead body of Pratik Shivsharan was found in the field of Mahadev Doke situated at Village Machnur on 1st November 2018. During investigation of the crime on 11th January 2019, the appellant/accused came to be arrested.

5 According to the prosecution case, the appellant/accused used to indulge in inhuman, aghori and evil practices and in order to see that he as well as his family members recovered from the ailments suffered by them, he had caused sacrifice of Pratik Shivsharan to Vetar Baba through instrumentality of co-accused Bharat Shivsharan and juvenile in conflict with law Vaibhav Shivsharan.

6 Evidence against the appellant/accused is comprising of extra judicial confession made by co-accused Bharat Shivsharan to his son Pradeep Shivsharan so also extra judicial confession made to Santosh Kalubarme and Sanjay Doke.

7 Statements of Audumbar Patil and Babulal Mullani recorded on 15th December 2018 and 15th January 2019 respectively show that on 27th October 2018, accused Bharat Shivsharan along with his son – juvenile in conflict with law Vaibhav Shivsharan kidnapped Pratik Shivsharan and then took him in the field of sugarcane by gagging his mouth. On 1st November 2018, dead body of Pratik Shivsharan was found in the field. Left leg of the dead body was amputated from the knee. Scalp hair of the dead body were found removed. Left ear of the dead body was partially cut. Neck of the dead body was also partially cut. Several ladies inner wears were also found on the spot of the incident apart from the tube of hair removal cream.

8 Pradeep Shivsharan, who happens to be son of accused Bharat Shivsharan, in his statement made to police disclosed that when he returned to Village Machnur, on getting knowledge of death of Pratik Shivsharan on 2nd November 2018, his father Bharat Shivsharan (co-accused) started weeping and disclosed to him that for welfare of family, he

had sacrificed Pratik Shivsharan, at the instance of appellant/accused Nanasaheb Piraji Doke. His father further told him that sacrifice of Pratik Shivsharan was made at the instance of appellant/accused Nanasaheb Piraji Doke in order to oblige the appellant/accused, who had always helped the family. Evidentiary value of this extra judicial confession made by the father to his son needs to be evaluated at the trial but this extra judicial confession is gaining support from statement of Audumbar Patil and Babulal Mullani.

9 Supplementary statements of Santosh Kalubarme and Sanjay Doke recorded on 10th February 2019 show that on 9th January 2019 and 6th January 2019 respectively, the appellant/accused made extra judicial confession to both these villagers stating that after sacrificing Pratik Shivsharan, his health has recovered. Santosh Kalubarme happens to be a peon in the school run by the Trust, of which the appellant/accused happens to be the Chairman and Sanjay Doke is stated to be a social worker as well as an agriculturist. Their supplementary

statements are recorded on 10th February 2019. Effect of alleged delay in recording their statements will have to be ascertained during the trial, and that too, after considering the material elicited from cross-examination of the Investigating Officer. At this stage, these statements implicating the appellant/accused cannot be discarded, particularly in the light of corroborative evidence in the nature of statement of Audumbar Patil and Babulal Mullani. Material collected by the Investigator shows that co-accused Bharat Shivsharan was doing sundry work for appellant/accused Nanasaheb Piraji Doke and as such, was associated with him. Witnesses have also stated that the appellant/accused used to indulge in inhuman, evil and aghori practices.

10 Considering the nature of offence as well as the material collected by the Investigator during course of the investigation, in our considered opinion, the learned Special Judge had not committed any error in rejecting the application for bail of the appellant/accused. Therefore, the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)