

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

BAIL APPLICATION NO.02 OF 2019

Mehboob Alam Samidulla Maniyar Applicant.

vs.

The State of Maharashtra Respondent.

Mr. H.H. Ponda for Applicant.

Mr. Prashant Jadhav, APP. for State.

CORAM : P.N. DESHMUKH, J.

DATE : 15th April, 2019

PC :

1. This application for bail is filed by one of the co accused involved in CR No.19/2017 for the offence punishable under Sections 302, 201 read with 34 of the Indian Penal Code.

2. Heard learned counsel for applicant and the learned APP.

Perused the copy of charge sheet filed along with application.

3. Learned counsel for applicant submitted that, only involvement of applicant is on the basis of confessional statement of co accused of his pointing out place from where dead body is recovered, three months after the incident which place according to learned counsel is accessible to all. It is contended that according to the case of prosecution applicant had motive to do away with deceased Shriram, as applicant owed substantial amount to him and with intention to avoid repayment deceased was done away on 27.9.2016. Learned counsel to falsify the case of prosecution had relied upon call details records of deceased where from it is established that even on 28.9.2016 deceased has used his cell phone calling on on two different numbers at 8.25 a.m. of which no investigation is carried out. It is therefore, submitted that case of prosecution of death of deceased on 27.9.2016 itself is doubtful. It is also submitted that from the report lodged by Investigating officer, apart from involvement of applicant based on statement of co accused there is no independent evidence. Co-accused is said to be released on bail who is similarly placed.

Applicant has therefore prayed for his release on bail on merits as well as on parity with that of co-accused. It is prayed that application be allowed.

4. Learned APP. opposed application contending that there is sufficient evidence establishing applicant's involvement in the present crime as deceased appears to have provided hand loan to applicant which amount is not found refunded back by applicant to deceased. On this case of prosecution, learned counsel for applicant has referred to statement of one Nitesh Gore to urge that his statement falsifies the case of prosecution on this count. Learned APP. however could not put forth any other reason establishing applicant's complicity in the crime.

5. In the background of submissions advanced as aforesaid record reveal that father of deceased on 27.9.2016 had lodged missing complaint which was accordingly investigated by police and on investigating PSI Bhave lodged report to the effect that during the course of investigation of said missing report involvement of applicant along with co accused has been established as applicant had obtained

hand loan from deceased and when deceased Shriram asked for repayment of the same on 27.9.2016, he was called by accused persons in their godown and on the same day caused his murder. Contents of report by PSI Bhave would reveal that, said aspect is revealed during the course of investigation only on the confession of co accused, which evidence admittedly is not admissible in the eyes of law.

Rest of the contents in the report are with regards to call details (CDRs) dated 27.9.2016 between deceased, applicant and co accused. However, considering the case of prosecution that deceased as well as applicant and co accused were knowing each other even prior to report, merely because they had conversation on phone prior to incident by itself does not establish applicant's involvement, as at the most, from these CDRs it can be said that, applicant and deceased had talked to each other on phone. Even otherwise no much importance can be given to said piece of evidence particularly in view of CDR records. which goes to establish that mobile phone of deceased was even used on 28.9.2017 as on that day, there are more than five

phone calls made from this cell number which also doubts the case of prosecution of death of deceased on 27.9.2016 itself.

5. Perusal of statement of Nikesh More as referred on behalf of applicant is concerned, would reveal that he has acted as mediator between deceased and the applicant due to which applicant in his presence had repaid amount of hand loan obtained by him from deceased, even prior to lodging of missing report. In fact, his statement would reveal that, about more than five lacks were paid to deceased. In view of this statement contents of report that applicant and co accused committed murder of deceased as they wanted to repay the amount obtained from him does not stand for any reason. In the background of above evidence against the applicant when further case of prosecution of applicant's pointing out spot under his memorandums statement, where from dead body came to be recovered, almost after three months from 27.9.2016, when considered with the statement of Vahid Kureshi owner of godown where from dead body is recovered would establish that since 2015 he is in possession of the said godown premises admeasuring 2000sq ft.

he was visiting his godown after 2-3 months which is made up of tin sheets having wooden door which was never locked and as such has specifically stated that anybody had access to the said place. He also stated that this was also used for storage of scrap. In view of fact as aforesaid and the nature of evidence against applicant, application is liable to be allowed on merits as well as on parity as case of co accused and that of the applicant is found materially similar who is released on bail by this court. Hence, following order is passed.

ORDER

- a) Applicant Mehboob Alam Samidulla Maniyar shall be released on bail in CR No.19/2017 registered with Nigadi Police Station, Pune (now converted into S. C. No.355 of 2017) on his executing PR bond in the sum of Rs.50,000/-with one surety in the like amount,.
- b) On being released on bail, applicant shall mark his presence to Nigadi Police Station, Pune once in three months on the first day of each such month pending trial.
- c) Application is accordingly disposed off.

(P.N.DESHMUKH, J.)