

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

CRIMINAL BAIL APPLICATION NO.40 OF 2019

Pradeep Kallapa Fulari

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Ms.Shubhangi Parulekar a/w Pranit Namde, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.
- PSI Raju Rathod, Rajgad Police Station, Pune, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 12th JULY, 2019

P.C. :

1. The Applicant is seeking bail in connection with C.R.No.138/18 registered with Rajgad Police Station, Pune, under sections 302, 201 r/w 34 of the Indian Penal Code. The investigation in this case is over and the charge-sheet is filed on 05/09/2018. The incident is dated 05/06/2018. The present Applicant is arrested on 13/06/2018.

2. The FIR was lodged at the instance of Police Patil Bhushan Krushnaji Dhadve on 05/06/2018 when an unknown dead body was found in the agricultural field of one Shubhash Mahangare within the limits of village Sarola. The dead body had many injuries and therefore the offence u/s 302 of IPC was lodged. Post-mortem notes show that the deceased had suffered about 6 incised wounds and the cause of death was mentioned as “death due to Cardiorespiratory arrest due to head injury with skull bone fractures with intra cranial hemorrhage”.

3. It is the case of prosecution as reflected in the charge-sheet that the dead body was of one Arundas Shivaji Suryavanshi. He was working in a garage of one Vitthal Gurav. The accused Nagesh Chandrasa Gurav and the present Applicant were having a garage at Kasarwadi. They wanted the deceased to work with them. However, the deceased did not join them. It is further case of the prosecution that the accused Nagesh had taken Rs.10,000/- from the deceased. He did not want to repay that amount and therefore Nagesh alongwith the

present Applicant and one Renukacharya took the deceased to an agricultural field of Subhash Mahangare in village Sarola, Taluka Bhore and committed his murder with sharp weapons. The charge-sheet contains statement of the brother of the deceased and the employer of the deceased. Both the statements show that from 11.30 in the night of 04/06/2018 the deceased could not be contacted.

4. The learned Counsel for the Applicant submitted that there is absolutely no evidence against the present Applicant. The only circumstance against him is recovery of clothes at the instance of present Applicant which shows presence of human blood of 'A' group. However, that piece of evidence is very weak and the recovery is not effected in consonance with section 27 of the Evidence Act.

5. As against these submissions, learned APP submitted that recovery of clothes with bloodstains is a strong circumstance and the blood group of the deceased was on the

Applicant's clothes. Therefore complicity of the present Applicant is more than clear. She submitted that the Applicant does not deserve to be released on bail.

6. With the assistance of the learned Counsel of both the sides, I have gone through the entire charge-sheet. The only circumstance against the present Applicant as mentioned was recovery of clothes, which were worn by the accused at the time when the incident of assault had allegedly taken place. That recovery is effected on 15/06/2018. The said memorandum and recovery Panchanama show that, on enquiry with both the Applicants as well as the main accused Nagesh, they told that the clothes were kept on a table in the garage. After that, the police and the Panchas went to their garage and seized the clothes.

7. This recovery will not strictly fall within the requirements of section 27 of the Evidence Act. The statement leading to recovery is not attributed exclusively to the present

Applicant. Exclusive authorship of concealment is also not attributed to him. Therefore it cannot be said that the present Applicant had concealed the clothes and those clothes were recovered at the instance of the present Applicant. In any case, the clothes were kept only on the table in their garage. They were not even concealed. Therefore this is not an incriminating piece of evidence.

8. Though the CA report shows that the clothes had blood stains of the blood group of the deceased i.e. group 'A', since recovery itself is doubtful; this circumstance in the nature of CA report, will not be an incriminating circumstance against the present Applicant.

9. The motive is alleged only against the main accused Nagesh. The present Applicant had no concern with the deceased. Besides this, there is absolutely no evidence in the entire charge-sheet which can be said to be incriminating showing involvement of the application. Therefore the Applicant

has made out a case for his release on bail. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.138/18 registered with Rajgad Police Station, Pune, 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.)