

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

BAIL APPLICATION NO. 324 OF 2019

Shivraj Kantilal Hegade	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Abhijit P. Kulkarni for the Applicant.
 Ms. S.S. Kaushik, A.P.P. for the Respondent – State.
 Mr. V.D. More, Police Constable, Indapur Police Station, present.

CORAM : P.N. DESHMUKH, J.

DATED : 10th APRIL, 2019.

P.C. :

1 Heard learned Counsel for applicant and learned A.P.P. Investigating Officer is present. Perused the charge-sheet.

2 One of the accused involved in crime No.762 of 2018 registered with Indapur Police Station for the offence punishable under Sections 302, 201, 364A, 120B r/w 34 of I.P.C. and Sections 39, 45 of Maharashtra Money Lender Act, has filed this application for bail.

3 It is submitted that in the entire charge-sheet there is no evidence establishing applicant's involvement as assailant of deceased except for bare statement in F.I.R. alleging that on 29.09.2018 and

30.09.2018 applicant was seen in the company of deceased, as had called him, for settling the accounts while dead body of deceased was found two days thereafter in a well. It is thus, submitted that only on the basis of said piece of evidence, applicant is arrested and is in custody since his date of arrest is 30.10.2018 and has therefore, prayed that application be allowed by imposing suitable conditions.

4 Learned A.P.P. opposed the application on the ground that on his arrest applicant has shown the spot of incident and his blood stain clothes are also seized. It is also submitted that from the statements of Sanket and contents of report, involvement of applicant is established since immediately prior to death of deceased, he was lastly seen in the company of applicant and co-accused and has thus contending that as case of prosecution is based on theory of last scene. Since, same is established as afore stated, applicant is not entitled for bail.

5 Perusal of report by father of deceased reveals that about three years prior to incident his deceased son had obtained hand loan with the intervention of applicant from co-accused Somnath and inspite of repaying Rs.90,000/- out of same, applicant and co-accused were demanding the amount and co-accused against said payment had also got complainants land admeasuring 30 gunthas transferred in his name. As such, it is the

case of prosecution that for this reason applicant and co-accused had done away with the deceased.

6 Perusal of report would further reveal that on 30.09.2018 deceased telephonically informed complainant that he was with applicant and co-accused near Sonai Dairy where he was subjected to assault by them for non-payment of above amount. Accordingly, when he was about to proceed to Sonai Dairy along with his another son Harshad, he received phone call from deceased informing that he was now at the house of applicant and accordingly they visited his house where they were present and deceased informed him that he was called there by applicant for settling the accounts. On complainant insisting deceased to accompany him back home, he denied his request saying that he wanted to lodge report, therefore, complainant went back and on the following day though tried to contact deceased on phone, he could not establish contact with him and at about 1.00 p.m. on 02.10.2018 dead body of his son was found in a well situated in the field of one Aba Hegde.

7 In the entire charge-sheet, except for above evidence on the point of last seen, there is absolutely no evidence in establishing applicant in this crime in any manner.

8 Perusal of statement of Deepali Pawar though reveals that in

the night of 29.09.2018 applicant along with co-accused had been to her room in the night and were talking to do away with deceased as he was not repaying hand loan. Said statement of Deepali is dated 03.10.2018, and as per the case of applicant before recording her statement on 01.10.2018, applicant has lodged report against her upon which offence is registered vide Crime No.759 of 2018 under the provisions of Money Lander Act, which fact doubts the statemnet of Deepali, as prima facie it establish false involvement of applicant in the present crime as applicant has lodged report against her, as afore stated.

9 In the light of available evidence as aforesaid thus, there is absolutely no evidence against applicant. Though prosecution has opposed the same on the ground of theory of last seen and on the count of applicant's pointing out spot of assault and about seizure of his blood stain clothes, even if all these points are collectively considered are not sufficient to reject the bail for the reason that admittedly there is no C.A. report on record inspite of fact of deposing muddemal articles with C.A. on 07.12.2018 and filing of charge-sheet before the competent Court on 22.12.2018, similarly though applicant has shown spot as per his memorandum statement, that by itself is not sufficient to reject the application, in the absence of other corroborative evidence to establish his involvement. In the circumstances application is allowed.

ORDER

(i) Applicant shall be released on bail in C.R. No.762 of 2018 registered with Indapur Police Station for the offence punishable under Sections 302, 201, 364A, 120B r/w 34 of I.P.C. and Sections 39, 45 of Maharashtra Money Lender Act, on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

(ii) While on bail, applicant shall mark his presence with Indapur Police Station once in three months on the first day of each such month pending trial.

(iii) Applicant shall not influence the witnesses.

(iv) Learned trial Court Judge shall not get influenced with the observations as aforesaid and shall independently evaluate the evidence on record at the time of trial.

(P.N. DESHMUKH, J.)