

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

BAIL APPLICATION NO.619 OF 2019

Shrikant Aba Shirtavle

...Applicant

Vs.

State of Maharashtra

...Respondent

Mr. Satyavrat Joshi, for the Applicant.

Ms. A. A. Takalkar, for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : JUNE 25, 2019

P.C.:

1. The applicant is seeking regular bail in connection with C.R. No.307/2017 registered with Daund Police Station under Sections 302 and 201 of IPC.

2. This is the second bail application preferred by the present applicant. Earlier bail application was withdrawn by the applicant. After that application was withdrawn, co-accused was granted bail by this Court vide order dated 30/1/2019 passed in Criminal Bail Application No.2333/2018. The applicant is claiming parity and therefore has preferred this bail application.

3. The FIR is lodged on 6/6/2017. The FIR is lodged by one

Pandurang Khatke who has seen the dead body. The throat of the dead body was slit. Based on this information, the FIR was lodged and the investigation commenced. During the course of investigation, statements of three witnesses were recorded on 13/7/2017. They were Pravin Shinde, Manoj Tekale and Sandesh Girme. Their statements are consistent. It was stated that on 5/6/2017, in the afternoon, all three eye witnesses were going to Jejuri in a car. The main accused Sandeep was traveling with them. When they had reached Nira, at that time, present applicant and one Santosh crossed their car. Both of them gave a signal to Sandeep. That time these eye witnesses asked Sandeep as to how those persons were present at that spot. At that time, Sandeep told them that one Shibu Ghosh was to pay some money to Santosh and therefore they had come to collect money. The eye witnesses have stated that accused Sandeep was constantly in touch with Santosh on telephone. The present applicant was riding a motorcycle where Santosh was the pillion rider. Around 8 O' clock, eye witnesses saw that the present applicant, Santosh and Shibu Ghosh were consuming liquor. Sandeep went to him. He attacked Shibu and put him in the car. Sandeep told co-accused Rishabh to show him the way to Satara. Thereafter, all these eye witnesses, Shibu Ghosh and Sandeep travelled in the car. They were shown the way by Rishabh. Present applicant

and Santosh followed them. After Kurkumbh village co-accused Rishabh showed them a secluded spot. There was darkness around that spot. Rishabh, present applicant and Santosh stopped there. They stopped their motorcycle near the car in which the eye witnesses were travelling. The main accused Sandeep removed a bag from below the seat. He dragged Shibu to some distance and came back after some time and kept the bag in the car. Then all of them left that place. Rishabh went to Kurkumbh side and present applicant and Santosh went to Baramati side. The eye witnesses and Sandeep went towards Satara. While they were going to Satara, Sandeep confessed that he had committed murder of Shibu Ghosh.

4. Heard Mr. Joshi, Ld. Counsel for the applicant and Ms. Takalkar, Ld. APP for the State.

5. Shri. Joshi submitted that there is absolutely no difference between the role of present accused and the co-accused Rishabh who is granted bail by this Court. He submitted that this Court in that order had observed as follows :

“The prosecution case is based on the statements of eye witnesses namely Pravin, Manoj and Sandesh. All

these three persons have in detail narrated as to how the incident in question took place.

If the statements of these three witnesses are accepted as it is, the only role that could be inferred against the applicant is that of riding a motorcycle while accompanying the accused at the scene of offence who were travelling in four wheeler.

Other than above, there is no specific role of active participation is attributed to the applicant in the crime in question. Applicant is behind the bar for almost more than one and half year.”

6. He therefore submitted that the applicant also deserves to be released on bail. He further submitted that in any case, the narration of the incident by the eye witnesses shows that the present applicant had not accompanied the main accused Sandeep when he had dragged the deceased to the spot where murder was committed. Shri. Joshi submitted that the offence is committed in a spur of moment and there is no weapon involved.

7. On the other hand, Ld. APP pointed out that the evidence

shows that it is a pre-planned murder. The present applicant and Santosh had met the deceased, consumed liquor and thereafter Rishabh had shown the spot where Sandeep had committed murder.

8. Considering the statements and the order passed by this Court granting bail to Rishabh, I am unable to agree with the submission of Ld. Counsel Shri. Joshi. The statements of eye witnesses clearly show that the offence was a pre-planned. First the present applicant and Santosh were seen together. The main accused Sandeep was fully aware of their whereabouts. He was constantly in touch with Santosh who was the pillion rider of the motorcycle driven by the present applicant. Thereafter, Santosh, present applicant and deceased Shibu had consumed liquor. That also appears to be a part of their plan because after Shibu had consumed liquor, Sandeep had come there and had attacked Shibu. Thereafter, Shibu was forcibly kept in the car. After some time, Rishabh had shown the secluded spot where Sandeep had dragged the deceased for some distance and then had committed his murder. The dead body was found near that spot. All these factors go to show that present applicant, Santosh and Rishabh had taken active part in planning and executing the murder of Shibu when ultimately the offence was completed by the main accused Sandeep.

Narration by the eye witnesses is clear enough. Though Rishabh is granted bail, I am not inclined to grant bail to the present applicant. Accordingly, the application is rejected.

(SARANG V. KOTWAL, J.)