

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

**CRIMINAL BAIL APPLICATION NO.694 OF 2019**

Tanaji Ganu Naik

.... Applicant

versus

The State of Maharashtra & anr.

.... Respondents

.....

- Mr.Machhindra Patil a/w Mr.Vijaykumar R. Garad, Advocate for Applicant.
- Mr.Prashant Jadhav, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.**

**DATE : 26<sup>th</sup> JULY, 2019**

**P.C. :**

1. The Applicant is seeking his release on bail in connection with C.R.No.150/18 registered with Karjat Police Station, Raigad, under sections 302, 341 r/w 34 of the Indian Penal Code.

2. The prosecution case is that on the night of 01/09/2018 at around 09.30 p.m. the deceased Pratap Dabhade was going towards Mandvane from 'River Touch Resort'. He was

travelling on his motorcycle. At that time, the accused No.1 Pandharinath Ganpat Agaj and the present Applicant intercepted him. It is alleged that they assaulted Pratap Dabhade with heavy wooden stick on his head and face and committed his murder. His dead body was thrown nearby.

3. The FIR is lodged by one Rishikesh Vilas Dabhade on 02/09/2018. He was the nephew of the deceased. He has mentioned in his FIR that the wife of the deceased had called him and had informed him that the deceased had not returned back after he had gone to River Touch Resort. He had gone to that resort at 07.00 p.m. and thereafter he had not returned till late in the night. On enquiries made with his friends and relatives, he came to know that the deceased had left the resort for Mandavane at around 09.30 p.m. Therefore his friends and relatives searched in the area around River Touch Resort. They found the motorcycle of the deceased and on careful search they found the dead body of the deceased. The post-mortem was conducted and he was found to have suffered about six external

injuries. There was a skull fracture and hemorrhage under the scalp. The cause of death was “Head injury and multiple injuries on face.”

4. During investigation, the Applicant was arrested on 03/09/2018.
5. It is the case of prosecution that there was political rivalry between the Accused and the deceased. The investigation was completed and the charge-sheet is filed.
6. In the charge-sheet, there is a reference to recovery of wooden stick at the instance of the main accused No.1 Pandharinath Agaj. As far as the present Applicant is concerned, there is a recovery of clothes and shoes at his instance from near a bridge on the river from the bushes. There is a statement of one Ram Anil Waghmare who has stated that on 01/09/2018 at around 09.30 p.m. he had seen both the accused throwing somebody in the lawn around that area.

7. Heard learned Counsel Mr.Machhindra Patil for the Applicant and learned APP Mr.Prashant Jadhav for the State.
8. Learned Counsel for the Applicant submitted that there is hardly any evidence against the present Applicant. The alleged recovery at his instance is not incriminating. The clothes and the shoes are recovered from the place which was accessible to all. He submitted that only other evidence is the statement of Ram Anil Waghmare. This witness is not a reliable witness. In any case his statement is vague.
9. Learned APP submitted that the C.A. report shows there was blood on the clothes and shoes of the Applicant recovered at his instance. However, the blood group was not conclusive. He submitted that the statement of Ram Waghmare is sufficiently incriminating against the present Applicant. He submitted that the call data record shows that the main accused and the Applicant were in touch with each other and were in the same locality. He submitted that soil found on the shoes matched with the soil in that area.

10. I have considered these submissions. The case is based on circumstantial evidence. The circumstance of recovery of shoes at the instance of Applicant suffers from basic infirmities. The articles were recovered purportedly at his instance from near a bridge near a river. The articles were thrown in the bushes. That spot was accessible to everybody. Therefore it is not in consonance with the requirements of section 27 of the Evidence Act. This factor can be taken into consideration even at the stage of deciding the bail application. Therefore the finding of blood and the soil from that area on the shoes cannot be used against the present Applicant. The only evidence that remains against him is the statement of Ram Anil Waghmare. This witness allegedly had seen both the accused throwing somebody in the lawn in the area. However, he had not approached police or had not disclosed this fact to anybody till 19/10/2018. He has not satisfactorily explained as to why he had remained silent all these days. He has given a lame explanation that he was afraid of the present Applicant and other accused. However, the

statement does not indicate as to what factor made him change his mind and how his fear was removed. He had not actually seen, what the accused had thrown in the lawn. He has stated that he had seen them throwing somebody in the lawn. However, even when the accused had left the place, till the search party had found the body, he had not gone there to find out what was thrown. Therefore his statement is also not a strong circumstance against the present Applicant.

11. There are no other circumstances against the present Applicant. Therefore the Applicant can be released on bail. Needless to add that all these observations are restricted for decision of this bail application. The trial Court shall not be influenced by any of these observations and shall decide the matter on its own merit. Hence, the following order :

### **ORDER**

- (i) The Applicant is directed to be released on bail in connection with C.R.No.150/18 registered

with Karjat Police Station, Raigad, 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.)**