

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.855 OF 2019

Haridas Nathu Medage] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Satyavrat Joshi, Advocate for the Applicant.

Ms. S.S. Kaushik, APP for the State/Respondent.

PI Arvind Chaudhari attached to Khed Police Station, Pune (Rural) attached.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 16th SEPTEMBER, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.284/2014 registered with Khed Police Station, Pune u/sec.302 of I.P.C.
2. The applicant is arrested on 07/12/2014 and since then he is in custody. The investigation is over and the charge-sheet is filed.
3. The FIR is lodged on 07/12/2014 by the applicant's father Nathu Medge. The FIR pertains to the murder of applicant's brother

named Bhau. The applicant's father Nathu Medge in his FIR has stated that, the applicant and the deceased were staying together in the past at Mumbai and they were doing job of carrying tiffins. The deceased Bhau was addicted to liquor. There used to be frequent quarrels between the deceased and the applicant. The FIR further mentions that, the applicant was having illicit relationship with the wife of the deceased and therefore, the informant brought the applicant to their native place. Since past one year before the incident, the applicant was residing at village Tapalwadi. Even then the applicant was contacting wife of the deceased telephonically. The applicant had also got addicted to liquor. It is mentioned in the FIR that, 8 days prior to the incident, the applicant had mentioned before the informant that, he was planning to commit murder of the deceased.

4. On 06/12/2014 in the night, the informant and his other family members had gone to attend religious function in the village. The deceased Bhau had come to the village for such celebration. In the night the deceased had consumed liquor and therefore, he did not accompany other family members to that function. He was sleeping in the house. The back door was latched from inside. The family

members had locked the front door from outside. The applicant and his other brother Kundalik were in their new house which was different from the house where the deceased was sleeping. At 11.00 p.m., after the function was over, daughter of the deceased went home. When she opened the door, she saw that, the deceased was lying in a pool of blood. She alerted others. It was seen that, the deceased had already died. The informant and others went to informant's new house where they saw the applicant and his other brother Kundalik. The applicant was under influence of liquor. Both the applicant and Kundalik stated that, they were unaware of such incident. However, on suspicion against the applicant because of his past history, this FIR was lodged.

5. Heard Mr. Satyavrat Joshi, Ld. Counsel for the Applicant and Ms.S.S.Kaushik, Ld. APP for the State/Respondent. With their assistance, I have gone through the charge-sheet attached with this application.

6. Mr. Joshi submitted that, the applicant is arrested merely on the basis of suspicion. There is no concrete evidence against him. He

submitted that, the circumstances against him are (i) motive, (ii) recovery of his clothes and (iii) recovery of stone at his instance. He submitted that, the motive was not supported by any material. He pointed out that, the Chemical Analysis Report does not show presence of any blood on the clothes of the applicant. He submitted that, the alleged stone was found outside the cattle shed which was a public place adjacent to the house. He therefore submitted that, the applicant has made out a case for his release on bail.

7. Ld. APP opposed this application and submitted that, the FIR itself shows that, there was strong motive for the applicant to commit murder of his brother. She further relied on the recovery at the instance of the applicant.

8. I have considered these submissions. Except for the suspicion entertained by the first informant that the applicant was having illicit relationship with the wife of the deceased, there is hardly any cogent material supporting such suspicion. There is no evidence to show that, anyone had seen the applicant entering the house where the deceased was sleeping. The applicant's brother Kundalik's statement shows that,

the applicant was present in another house and when Kundalik returned to that house, the applicant was already in the house and was talking on the phone. The most significant circumstance in favour of the applicant is that, the clothes which he was wearing did not show presence of any blood. The prosecution case is that, the deceased was assaulted by stone on his head. Therefore, naturally, the blood was expected on the clothes of the applicant. Apart from that, the suspicion that, only a known person could enter the house from the back door is not supported by any other evidence.

9. The recovery of the stone at the instance of the present applicant will not be an incriminating circumstance because the stone was found outside the cattle shed and the place was accessible to all. This was the only circumstance mentioned in the FIR. But it does not complete the chain of circumstances. Hence, considering the weak nature of evidence, at this stage I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.284/2014 registered with Khed Police Station, Pune, on

his furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)