

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

CRIMINAL BAIL APPLICATION NO. 734 OF 2018

Siddanth Dnyaneshwar Ganore ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

Mr.A.P. Mundargi, Senior Advocate a/w. Mr.Madan Gupta for Applicant.
Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 3rd April 2019.

P.C. :

1] This is an application under Section 439 of the Code of Criminal Procedure for bail in connection with C.R. No. 243 of 2017 dated 24/05/2017 registered with Vakola Police Station, Mumbai, for the offence punishable under Section 302 of the Indian Penal Code.

2] Heard the learned Senior Counsel for the applicant and the learned APP for the State. Perused the chargesheet.

3] The prosecution case in brief is, that the applicant is the son of informant Mr.Dnyaneshwar Ganore and deceased Smt.Dipali Ganore. That on 23/05/2017 between 11.30 am to 11.15 pm, the applicant due

to domestic quarrels and/or continuous bickering with his mother, committed her murder with a sharp edged knife by assaulting on her throat and chest.

During the course of investigation, the applicant came to be arrested on 25th May 2017 and after completion of investigation, the police have submitted the chargesheet.

4] Mr.Mundargi, the learned Senior Counsel for the applicant submitted that there is no legally admissible evidence/material available on record against the applicant in the present crime. That, there is no eye-witness to the present crime. He further submitted that the alleged confession given by the applicant before the Jodhpur Police (State of Rajasthan) after his apprehension has no legal sanctity and the same cannot be taken into consideration, as a vital piece of evidence in the chain of circumstances. He submitted that, except the circumstances, i.e. last scene together and alleged finding of blood on the half pant of the applicant matching with the blood group of the deceased, there are no other circumstances put forth by the prosecution against the applicant. The learned Senior Counsel further submitted that, the Court cannot proceed on the footing of morality involved in the crime and has to take

into consideration the legally admissible evidence only. He submitted that the applicant is in jail since 25th May 2017. That the applicant is aged about 20 years and has no criminal antecedents at his discredit. He submitted that the police have already completed investigation and therefore, the applicant may be released on bail.

5] Per contra, the learned APP vehemently opposed the application and pointed out the material available on record.

6] The case of the prosecution is based on circumstantial evidence. It is the settled position of law that, in a case of circumstantial evidence the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In a case resting on circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words, the circumstances should be conclusive i.e. accused and the accused alone has committed

the crime.

7] A scrutiny of chargesheet would *prima-facie* indicate that, the prosecution has propounded three major circumstances against the applicant.

- (i) *Last seen together.*
- (ii) *Applicant was absconding from 23rd May 2017 to 24th May 2017.*
- (iii) *Blood-stains of the blood-group of deceased were found on the half pant of the applicant by the Chemical Analyzer.*

8] It *prima-facie* appears that, there were certain bickering and/or differences between the applicant and his mother over his pursuing of education. This *prima-facie* appears to be the motive propounded by prosecution behind the present crime.

9] Perusal of the chargesheet would indicate that the first informant Dnyaneshwar Ganore had called his wife (deceased) on 23rd May 2017 between 11.30 to 11.40 in the morning and she had informed him that, the applicant was not yet then ready to go out to reach his destination. When he returned to his house after completing his duty at about 11.15 pm, he found the door of his house locked and

therefore, he tried to contact his wife and son (applicant) on their respective mobile-phones, however they could not be contacted. After search of the key of the said house, he found it on the shoe rack, which was just adjacent to the door of the house. He opened the door and went inside the house and found that, his wife was lying in the pool of the blood in the bedroom with multiple injuries on her throat and chest.

In supplementary statement of the informant, he has narrated that, the deceased was suffering from depression, which had ultimately affected the atmosphere of the house. That the deceased was also undergoing medical treatment for the same. He has further stated that, the applicant was not inclined to take education in a particular stream, though his mother was pursuing for the same. The applicant thereafter had taken admission in a different college.

10] As far as the first circumstance of the last seen together is concerned, as noted earlier, the informant in his statement has stated that, he talked with his wife on mobile-phone between 11.30 to 11.40 am of 23rd May 2017, wherein she told him that, their son is in the house and was not ready to go to the destination as was directed by the informant.

11] As far as second circumstance of abscondance of the applicant is concerned, by now it is the settled position of law that, absconding may lend weight to the other evidence establishing the guilt of an accused, but, by itself, is hardly any evidence of guilt. The conduct of an accused making himself scarce for some period is relevant under Section-8 of the Evidence Act and may be indicative to some extent of a guilty mind, but it would not be conclusive evidence of his guilt. Even innocent person may, when suspected of grave crimes, attempt to evade arrest. Such is the instinct of self-preservation in an average human being. Absconding is a weak link in the chain of circumstances and is not conclusive either of guilt or a guilty conscience. Even assuming that, the fact of absconding has been established by the prosecution, it cannot be held that the appellant was the author of the crime in the absence of evidence pointing to his guilt.

12] The circumstance of finding of blood-stains of the deceased on the half-pant of the applicant by the Chemical Analyzer in its report dated 14th July 2017 indicates that, the blood detected on the Exhibit-25 i.e. half-pant of the applicant matched with the DNA profile of the deceased. It is to be noted here that the spot cum seizure panchanama

dated 24th May 2017 under which the half-pant of the applicant was seized by the police from the scene of offence nowhere mentioned about any blood-stains found by the Investigating Agency on it. Item No.19 of the list mentioned in the said panchanama describes the seizure of a wet T-shirt and gray colour half-pant from the bathroom of the house of the applicant. The description and mentioning of the fact of noticing blood-stains on it, is silent therein.

Thus, *prima-facie*, it appears that, there is only circumstance of last scene together which is available on record at this stage.

13] The applicant is in jail since 25th May 2017. The applicant is aged about 20 years and it is submitted that, there are no antecedents at his discredits.

14] In view of the above, the applicant can be released on bail.

Hence, the following order :-

- (i) The Applicant shall be released on bail in C.R. No. 243 of 2017 dated 24/05/2017 registered with Vakola Police Station, Mumbai, on his furnishing P.R. bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- (ii) After his release from Jail, the applicant shall attend Vakola Police Station, Mumbai, on every

first Monday of the month between 10:00 am and 12:00 noon, till conclusion of the trial.

- (iii) The Applicant shall attend all the dates before the trial Court, unless exempted by the concerned Court.
- (iv) In case of two consecutive defaults, the Prosecution is at liberty to file an application for cancellation of bail.
- (v) Applicant shall not tamper with the evidence and/or interfere with the process of investigation.
- (vi) Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]