

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

BAIL APPLICATION NO.916 OF 2019

Bapurao @ Mahadeo Sarjerao Khade Applicant

versus

The State of Maharashtra Respondent

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- Mr. Rahul S. Kate, Advocate for Applicant.
- Mr. S. H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.166/2018 registered at Atpadi Police Station, Sangli under Sections 302 and 201 of IPC.

2. The applicant is arrested on 15/7/2018 and since then, he is in custody. The prosecution case in brief is that between the night of 3rd and 4/7/2018, the deceased Kashinath Galande was going from Sangli towards Baramati in his tempo No. MH42-M-7895. The present applicant and three others abducted

deceased alongwith his tempo. He was taken to Yalmarwadi in a agricultural field. He was assaulted with stone on his head and face. After that, the dead body was kept in the same tempo and was taken to Sathwan Talav at Chinchale, Taluka Atpadi, District Sangli and was thrown there. The tempo was thereafter washed. It was taken to Karnataka State at village Lokur. The chargesheet was filed under Sections 302, 201, 120-B, 341, 397 r/w. 34 of IPC. The FIR was filed by one Sachin Mandale who was Police Patil of the village where the dead body was found. The driving licence of the deceased was found nearby. On that basis, the dead body was identified. The post mortem notes shows that the deceased had suffered seven injuries and the cause of death was mentioned as “massive traumatic brain injury”.

3. Heard Mr. Rahul Kate, Ld. Counsel for the Applicant and Mr. S. H. Yadav, Ld. APP for the State.

4. Mr. Kate submitted that there are no eye witnesses. The entire evidence is based on circumstantial evidence. He submitted that the main circumstances against the applicant are

that he was seen driving the tempo soon after the incident. His clothes were recovered at his instance. There was bite injury to his finger and there was extra judicial confession given to one Anil Nagargoje. He was father of one of the co-accused. He submitted that all these circumstances are weak and they do not form the complete chain of circumstances. Therefore, considering the weak nature of evidence, he deserves to be released on bail.

5. As against this submission, Ld. APP submitted that circumstances themselves are sufficient to fix the guilt against the present applicant. Therefore, he opposed to grant bail to the applicant.

6. I have considered all these submission. The strong circumstance against the present applicant is that he was seen driving the tempo of the deceased soon after the incident. The applicant alongwith tempo was captured on CCTV footage at the petrol pump where fuel was filled soon after the incident. The CCTV footage was shown to one of the relatives of the applicant Amol Thorve. This witness has identified the applicant as a person

who was driving the tempo soon after the incident. Thus, this is a strong circumstance against the present applicant. Apart from this, there are two employees of the petrol pump namely Shreyas Pailwan and Sagar Ghadge. Shreyas Pailwan had filled the fuel. He had identified the applicant when the applicant was taken to him by the police. Though, it is not a proper procedure for identification, statement of this witness coupled with CCTV footage shows that applicant was driving the tempo belonging to the deceased soon after the murder. There was no explanation coming forth from the applicant. The tempo was found abandoned at a far away place in Karnataka.

7. The other circumstance about the applicant having suffered bite injury is an important incriminating circumstance. On the next day morning he had taken treatment from a Doctor. The Doctor had treated him for that injury. This witness Dr. Nitin Chougule has stated that on 4/7/2018 the applicant had taken treatment for that injury at about 10.30 a.m. The prosecution case is that he had suffered this injury during the scuffle with the deceased. There was a recovery of a pant at the instance of

present applicant. However, at this stage C.A. report is not produced before me. Therefore, at this stage, this circumstance is excluded from consideration. The last and most important circumstance against the present applicant was the extra judicial confession given by him to one Anil Nagargoje who was father of co-accused Manoj Nagargoje. The applicant was seen in a frightened state by this witness on 4/7/2018. He was seen with injuries to his right thumb. This witness made inquiry with the applicant and Manoj. At that time, the applicant confessed to having committed murder of the deceased. All these circumstances are strong enough. There is sufficient material against the present applicant. The offence is serious. Therefore, no case is made out to release the applicant on bail. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)