

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

CRIMINAL BAIL APPLICATION NO.934 OF 2019

Mahesh @ Paman Anil Nagargoje	 Applicant
versus	
The State of Maharashtra	 Respondent
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- Mr.Sushrut Jadhwar, Advocate for Applicant.
- Ms.A.A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 14th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.166/18 registered with Atpadi Police Station, Sangli, under sections 302, 201, 120(B) r/w 34 of the Indian Penal Code.
2. The Applicant was arrested on 15/07/2018 and since then he is in custody. The investigation is already over and charge-sheet is filed.
3. The prosecution case is that the accused Mahadev Khade, Manoj Nagargoje and Ajit Argadya Pawar along with the

Applicant entered into conspiracy to commit murder of one Kashinath Mahadev Galande. The Applicant Mahesh Nagargoje and accused Manoj Nagargoje are brothers. The accused were extremely poor and to get money they decided to commit theft of a vehicle and cattle. They had planned to sale those cattle in the market. The deceased was owner of a pickup car. The accused No.1 Mahadev Khade and accused No.2 Manoj Nagargoje committed his murder in Gut No.471, in the field of one Sukhdev Kashinath Shingade by assaulting him with the stone on his head and face. The dead body was thrown in a lake.

4. The dead body was found in Sathvan lake by villagers. The Police Patil of the village went there, confirmed the identity of the body and then lodged his FIR.
5. Heard learned Counsel Mr.Sushrut Jadhwar for the Applicant and learned APP Ms.A.A. Takalkar for the State.
6. Learned Counsel Mr.Jadhwar for the Applicant submitted that in the entire charge-sheet there is hardly any

material against the present Applicant and therefore he deserves to be released on bail.

7. Learned APP opposed this application on the ground that there was extra-judicial confession made by co-accused to the father of the Applicant and it was an incriminating piece of evidence.
8. I have considered these submissions. Post-mortem notes show that the deceased had suffered 7 injuries. The cause of death was mentioned as “Massive traumatic brain injury”. But the final opinion was reserved as the Viscera was preserved.
9. There are no eyewitnesses to the incident. The case is based on substantial evidence. There is circumstance of recovery of clothes at the instance of co-accused Mahadev Khade and Manoj Nagarmoje. There is no recovery effected at the instance of the Applicant. The two accused Mahadev and Manoj had some injuries on their forearms which could have been caused during the scuffle. The pickup car of the deceased was found

abandoned at some distance. The only material mentioned against the Applicant is the statement of the Applicant's father. He has stated that on 04/07/2018 accused Mahadev and his son Manoj came to his house. They had brought one four wheeler. Mahadev and Manoj had suffered injuries. They looked scared. This witness then enquired with both of them. Those two accused in turn told this witness that they along with the present Applicant and co-accused Ajit Pardhi decided to steal cattle. They wanted a four wheeler to carry those cattle and therefore these two accused contacted a driver of a pickup car. He was taken to a secluded spot and he was assaulted with stone on his head. His dead body was kept at some place. This witness got angry and told the accused not to come to his house. Thereafter all of them left from there. This is the only piece of evidence against the Applicant. This is in the nature of extra-judicial confession made by co-accused to his father.

10. Though, it may be an admissible piece of evidence, this being the only circumstance, it is difficult at this stage to observe that it is sufficient to base conviction on this piece of evidence.

Of course this s matter of trial and the trial Court will decide the trial on the basis of evidence led before it.

11. There is circumstance of CCTV footage of petrol pump, where the four wheeler was taken for fuel after commission of offence. Even that CCTV footage essentially shows only the accused No.1 and 2 as per the Panchanama. There is nothing to show that the Applicant was present with them. Therefore, at this stage, the case against the Applicant appears to be weak and therefore he deserves to be released on bail. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.166/18 registered with Atpadi Police Station, Sangli, 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.)