

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 956 OF 2019**

Santosh Vishnu Shirtavle

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Kuldeep Patil i/b. Mr. Prashant S. Hagare, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 26th NOVEMBER, 2019.**

PC :

1. This is an application for Bail in connection with C.R. No. 301 of 2017, registered with Daund Police Station, Taluka Daund, District Pune, for offence punishable under Sections 302 and 201 of Indian Penal Code. ('IPC' for short)

2. This is a second application for bail preferred by the applicant. The previous Bail application viz Bail application No.57 of 2018 was withdrawn by the applicant vide order dated 05th February 2018. The co-accused Rishabh @ Sonu Laxman Yadav preferred Criminal Bail Application No.2333 of 2018 before this Court. Apparently he was party to Bail application No.57 of 2018 which was withdrawn on 05th February 2018. Hence, the fresh application

preferred by him was placed before the same Court. The said court, vide order dated 05th December 2018, directed to place the application before Regular Court observing that earlier application was withdrawn without arguing on merits. Hence, it was listed before the Regular Court. The Bail Application No.2333 of 2018 preferred by Rishabh was allowed by this Court by order dated 30th January 2019. The learned counsel for the applicant submitted that co-accused Rishabh Yadav was also one of the applicant along with present applicant in Criminal Bail Application No.57 of 2018, which was allowed to be withdrawn by order dated 05th February 2018. The other co-accused Shrikant Shrivastava had preferred second bail application before this Court viz. Criminal Bail Application No.619 of 2019. The said application was rejected by this Court vide order dated 25th June 2019.

3. The First Information Report (for short 'FIR') was lodged by Pandurang Khatke on 06th June 2017. Dead body of deceased Shibu was found. Throat of deceased was slit. Statement of witnesses i.e. Pravin Shinde, Manoj Tekale and Sandesh Girme were recorded on 13th July 2017. Pravin Shinde has stated that the person, namely, Shibu Ghosh was working with Sandip Narayan Dethe. Shibu Ghosh left the job in 2016. On 05th June 2017 he received call

from Sandip Dethe. He demanded Rs.1500/- from him. The witness met him. Sandip Dethe arrived in a car. The other witnesses Manoj Tekale and Sandesh Girme were accompanying him. At that time Sandip told him that they are going to Jejuri. The witness also agreed to join them. Manoj Tekale was driving the car. When they reached Nira, the applicant and Shrikant crossed their vehicle. Both of them gave signal to Sandip Dethe. Sandip told the Pravin, Manoj and Sandesh that Shibu Ghosh owes money to Santosh (applicant) and on the way they would collect the said amount from him. Shrikant Shirtavle and Santosh Shirtavle were on the motorcycle and the car was following them. Sandip was continuously talking on phone to Santosh Shirtavle (applicant). At about 04:30 p.m. they halted. Sandip told Santosh (applicant) to collect the money and return early and they would wait. They waited at Kurkambh MIDC. Sandip was continuously talking on phone. At about 07:30 p.m. Santosh @ Babu and Rishabh Yadav came at the said place and informed Sandip that Shibu Ghosh had just returned from work. Both of them left. Thereafter, Shrikant, Santosh and Shibu had drinks on the side of road. At about 08:00 p.m. Sandip received a phone call. Sandip told Manoj to drive the car, and told him to stop near the place where Shibu and others were sitting. Sandip got down from the car. He

picked up Shibu and banged him twice on the road. He lifted Shibu and put him in the car. Sandip told Rishabh to show the way of Satara. Pravin asked Sandip as to why he is assaulting Shibu. He told Manoj to take the car behind Rishabh. Thereafter, all of them proceeded. At that time Shrikant and Santosh were also proceeded on motorcycle. After driving for some time they went to a place. Rishabh stopped his motorcycle. Santosh and Shrikant also stopped. Rishabh signalled to Sandip to take the car in a particular direction. Rishabh, Santosh and Shrikant also stopped their vehicles. Sandip removed bag which was kept under car's seat and pulled Shibu out of the car. He took him to some distance where it was dark and again came with the bag, and kept the bag under the seat of the car. Rishabh went towards Kurkumbh. Santosh and Shrikant went towards Baramati. The car followed them. After some time Sandip removed the bag, which was kept under the seat of the car and threw it on the side of the road. All of them went to Satara. Sandip told him that he has killed Shibu Ghosh. The other witnesses, Manoj Tekale and Sandesh Girme made similar statements.

4. Learned counsel for the applicant submitted that the applicant had no knowledge about Sandip Deth. The applicant was on a motorcycle as a pillion rider and proceeding alongwith the car of

the accused No.1. There is no evidence on record to establish that there was any conspiracy to commit murder of Shibu Ghosh. Applicant cannot be attributed with knowledge and plan of murder allegedly committed by the co-accused. The other accused Rishabh was attributed serious role has been granted bail by this court. There is no recovery from the applicant.

5. Learned A.P.P. submitted that there is evidence against the applicant. The conduct of the applicant shows that he took part in the crime. It was a pre-planned murder. The offence is of serious nature. The statements of three witnesses show the involvement of the applicant in crime. The co-accused was accompanying the applicant. The Bail application of Shrikant Shirtavle who was riding motorcycle has been rejected. The role of the applicant cannot be distinguished from the role attributed to the co-accused Shrikant Shirtavle. The grant of bail to co-accused Rishabh, cannot be considered as parity to release the applicant on bail.

6. I have perused the statements of witnesses. In the statements of Pravin Shinde, Manoj Tekale and Sandesh Girme, narrates the incident. Their version is consistent. The applicant and the co-accused Shrikant Shirtavle were proceeding on motorcycle and leading the car. The Bail application preferred by Shrikant Shirtavle

has been rejected by this Court by order dated 25th June 2019. The statements of eye witnesses indicate that offence was pre-planned. The applicant and Shrikant were together on the motorcycle. The accused No.1 Sandip was continuously in touch with applicant, who was a pillion rider of the motorcycle driven by Shrikant. Subsequently, applicant, Shrikant and Shibu consumed liquor. On account of plan to kill Shibu all of them consumed liquor with deceased Shibu. Shibu was forcefully kept in the car. The co-accused showed the spot where accused No.1 Sandip had killed and dragged the deceased. The dead body was thrown. The circumstance shows that the applicant and others have taken part in a conspiracy to commit murder of Shibu. Shrikant was riding motorcycle and applicant was pillion rider. Application of Shrikant is rejected by this Court. The statement of Vijay Thakur mentions that on 04th June 2017 Shibu told him that his friends are coming from Satara. On 05th June 2017 at about 07:15 p.m. Shibu came with two persons who were introduced as Santosh Shirtavle and Shrikant Shirtavle from Satara. Shibu was earlier working at Satara. Shibu told him that he would have party with them and go to his village. All of them left. Thereafter he did not see Shibu. Thus applicants were instrumental in bringing Shibu at a place from where accused Sandip pulled him and

then killed. Applicant and co-accused had drunks with Shibu. The statement of Manoj also refers to the fact that Sandip received call and then took the car where Shibu and accused were sitting. Sandip had also stated to Manoj that applicant has to collect money from Shibu. However, no money was to be recovered from Shibu. Grant of bail to the co-accused Rishabh, cannot be considered as ground for bail to the applicant. In the light of the above and the nature of evidence on record, no case for grant bail to the applicant is made out and the application is required to be rejected. Hence, I pass the following order.

ORDER

- (i) Criminal Bail Application No.956 of 2019, is rejected.

(PRAKASH D. NAIK, J.)