

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

CRIMINAL BAIL APPLICATION NO. 501 OF 2019

Abhijeet Ananda Kamble	...Applicant
Vs.	
State of Maharashtra	...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 1008 OF 2019**

Ganesh Bajirao Yadav	...Applicant
Vs.	
State of Maharashtra	...Respondent

- Mr. Satyavrat Joshi I/b Mr. Nitesh J. Mohite, Advocate for the Applicant.
- Mr. Prashant Jadhav, APP for the State.
- Mr. A. S. Kanade, PN-1348, Shirala Police Station, Dist. Sangli.

CORAM : SARANG V. KOTWAL, J.
DATE : 1st AUGUST, 2019

P.C. :

1. Both these applications are decided by this common order because they arise out of the same CR No. 127/18 and the same investigation.

2. The offence is registered in respect of death of one Shivaji Jadhav. Initially the accidental death report was registered on 17th September 2018 after his dead body was discovered from a river

bed. He had suffered injuries on his head and other body parts. The postmortem conducted on the dead body, shows that the death was caused due to head injury with fracture of frontal parietal bones coupled with intra cerebral hemorrhage. He had suffered six external injuries, mostly on the head and face. There was fracture of his hand as well.

3. The ADR was lodged on the basis of statement given by Shankar Jadhav, who is cousin of deceased Shivaji. He had stated in the ADR that one Vikas Shingte had informed them that deceased was lying dead in a small stream known as Torna Stream below a bridge. At the time of lodging of FIR, he had not given any further details and had not expressed suspicion against anyone.

4. On 21st September 2018, the FIR was lodged at the instance of the same person Shankar Jadhav vide CR no. 127/18 under Sections 302, 201 read with 34 of the IPC. The applicants are seeking bail in connection with these offences.

5. In his FIR, the first informant had stated that the deceased had left his house at around 8.30 p.m. on 16th September 2018 and thereafter had not returned. The informant was told by Vikas

Shingte that the deceased was lying dead in the river bed of Torna River and thereafter dead body was discovered and postmortem was conducted. It is further mentioned in the FIR that the deceased was having enmity with one Mahadev Sapkal because Mahadev was suspicious that he was having illicit relationship with his wife. The FIR mentions that the police were making inquiries about the death of Shivaji Jadhav and they came to know that Gausulazam Salim Diwan, Ganesh Yadav, Rohit Gaikwad and present applicants had committed this offence. It was mentioned in the FIR that Mahadev Sapkal had hired Gausulazam and other accused including the present applicants for Rupees one lakh twenty thousand and thereafter Rupees sixty thousand were also paid for commission of Shivaji's murder. Based on these allegations the FIR was lodged.

6. Investigation is carried out and both these applicants were arrested on 21st September 2018. The investigation is over and charge-sheet is filed. It is mentioned in the gist of the prosecution story in the charge-sheet that Mahadev Sapkal was on visiting terms with deceased Shivaji Jadhav. He had given Shivaji's name

to the accused Gausulazam for commission of murder. The said accused alongwith the present applicants and others had hatched conspiracy to commit murder of the deceased.

7. On 16th September 2018, the accused called deceased Shivaji for consuming liquor and for dinner. He was taken to a room of one Vidyadhar Kulkarni. He was made to consume liquor and after he was sleeping, the accused including present applicants smothered him with a pillow. He was taken to a bridge on Torna river and was thrown in the river. The present applicants threw a big stone causing injuries to the deceased. Motor cycle was thrown from the bridge, purportedly making a show of accident. The charge-sheet contains statement of various witnesses. There are no eye witnesses to the incident. Therefore, the prosecution case is based on purely circumstantial evidence.

8. Heard, Mr. Satyavrat Joshi, learned counsel for the applicant and Mr. Prashant Jadhav, learned APP for the State.

9. Mr. Joshi submitted that there is nothing to connect the present applicants with the offence. He submitted that the FIR was lodged against Mahadev Sapkal. There was no direct connection

between deceased and the present applicants. He submitted that there are three circumstances reflected in the charge-sheet against the applicants. Firstly, applicant Abjijeet and deceased were last seen together. Secondly, recovery of stone at his instance and third one is call details record of telephonic conversation between the accused and deceased. Against other applicant Ganesh Yadav the only circumstance is the CDR showing conversation between the accused and deceased in the same locality, based on the location of the telephone towers. He submitted that these circumstances are not clearly established and are not sufficient to complete the chain of circumstances. He submitted that even at this stage the prosecution was obliged to point out the material which could reasonably connected the present applicants with the offence.

10. As against these submissions, learned APP submitted that the aforementioned circumstances were sufficient to connect the present applicants with the alleged offence.

11. I have considered these submissions. The first circumstance of 'last seen together' is based on the statement of only one witness namely Ayan Luis. His statement is recorded on 23rd September

2018 i.e. after the arrest of both the applicants. The prosecution has relied upon his statement to show that the deceased was last seen together in the company of the present applicant Abhijeet. Perusal of his statement shows that according to him at 9.15 p.m. deceased Shivaji had came to his liquor shop with other accused Gausulazam. They had purchased some liquor bottles and water bottles and snacks. The bill was paid by Gausulazam. After describing this, he has further mentioned that, at 9.45 p.m., another person came to his shop and he also purchased liquor bottles. The police had shown him photographs of the suspects including accused. According to him the person who had come to his shop at 9.15 p.m. was the applicant Abhijeet.

12. Though the investigating agency did not hold any test identification parade, the prosecution case is based on his identification of the photographs. Reading his statement as it is, shows that he had stated about two instances. At 9.15 p.m., the deceased had come to his shop. He had not stated in his statement that did the applicant Abhijeet had left the shop with the deceased and Gausulazam. Narration in his statement shows that this

applicant had come to his shop independently and his statement no where shows that this applicant was ever in company of the deceased in that shop at or after 9.45 p.m. Therefore, this circumstance is not an incriminating circumstance against the present applicant Abhijeet. The other circumstance against Abhijeet is recovery of stone at his instance. The statement recorded under Section 27 of the Indian Evidence Act does not mention the place where the stone was concealed. He had not even concealed that stone. Obviously the river bed was a place accessible to all. There was no special mark on the stone. Therefore, this recovery is a very weak piece of evidence and since it was found from a place open and accessible to all and since it was not concealed, it is not an incriminating piece of evidence.

13. Though the CA report does indicate that the stone had blood stains of inconclusive nature, since the discovery itself is doubtful and not in consonance with requirements of Section 27 of the Indian Evidence Act. This circumstance is not an incriminating circumstance against the applicant Abhijeet.

14. The last circumstance about the call detail record is also not

a circumstance which could connect the applicant with the alleged crime. The applicant was resident of same locality. The tower location of mobile tower covers a large diameter. If the applicant was having contact with other accused including deceased, does not mean that he is a party to commission of murder. The only circumstance against the other applicant Ganesh Yadav is about the CDR. He was also resident of the same locality and his calls to other accused or even to the deceased would not mean that he was a party to the conspiracy of commission of the murder.

15. Mr. Joshi submitted that there is one more circumstance, i.e. recovery of motor cycle at the instance of Abhijeet's father. Since that recovery was not made at the instance of the present applicants and since the prosecution has not connected that vehicle with the alleged crime, that is not a circumstance against the present applicants.

16. In this view of the matter, both the applicants deserve to be released on bail. Hence, the following order:-

ORDER

(i) The Applicants are directed to be released on bail

in connection with C.R. No.127/18 registered at Shirala Police Station, Dist. Sangli, on their furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one or two sureties each in the like amount.

(iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)