

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

**CRIMINAL BAIL APPLICATION NO. 1095 OF 2019
WITH
CRIMINAL APPLICATION NO. 609 OF 2019**

Mr. Kiran Somnath Kank Applicant
Versus
The State of Maharashtra Respondent

- Ms. Shubhangi Parulekar for Applicant.
- Mr. Prashant Jadhav, APP for the State/Respondent.
- Mr. Paras Yadav for Intervener.
- Mr. A. M. Taware, P.C. B.No.2413, Vadgaon Maval p.stn., present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 29th AUGUST, 2019**

P.C. :

1. The applicant is seeking his bail in connection with C.R.No.107/17, U/s.302 and 201 r/w. 34 of I.P.C. The prosecution case, in short, is that the deceased Hiranman Bhilare was having dispute over way to the land of accused No.1 and Madan. Accused No.2 was Madan's relative. The present applicant i.e. accused No.3 was their friend. Accused Nos.1 and 2 because of this dispute wanted to eliminate the deceased Hiranman. They along with

present applicant confronted deceased on 01/07/2017 at about 11.45p.m. in a secluded spot and thereafter accused nos.1 to 3 assaulted him with deadly weapons and committed his murder. The postmortem notes shows there were 17 injuries and cause of death was head injury.

2. The applicant was arrested on 04/07/2017 and since then he is in custody.

3. I have heard Ms. Shubhangi Parulekar, learned counsel for the applicant and Mr. Prashant Jadhav, learned APP for the State.

4. Learned counsel for the applicant submitted that it is a case of circumstantial evidence and there are no eye witnesses. The circumstance of recovery of clothes at the instance of present applicant is not incriminating because C.A. report does not show presence of blood. She submitted that only circumstances against the present applicant are two Extra Judicial Confessions given by the applicants to Krushna Dabhade and Prashant Salve. She submitted that both the statements are weak circumstances and apparently were made under pressure of police, therefore, they are

not reliable. Against this, learned APP, as well as, learned counsel for the intervener submitted that there is no reason to disbelieve the extra judicial confessions. They further submitted that the extra judicial confession is admissible piece of evidence, therefore, his guilt can be based on these confessions. I have considered the submissions. Recovery of clothes is innocuous since there are no blood stains on the clothes of the applicant. As far as, the extra judicial confessions are concerned, there are statements of Krushna Dabhade and Prashant Salve. Krishna has stated that on 02/07/17 at 2.00p.m. the applicant met them. The applicant's clothes were full of mud and his face was swollen. He was limping because of thorns in his feet. On being asked, he informed that Madan Waringe, Ganesh Hinge and he himself had committed murder of one person. After that Ganesh Hinge came there carrying two plastic bags. The accused went to Prashant's house. The applicant directed Prashant to burn those clothes. Thereafter Krishna and Prashant left all the accused to Kanhe railway station. After that the officers of Maval police station took both these witnesses Krishna Dabhade and Prashant Salve in custody. Thereafter their

statements were recorded.

5. The statement of Prashant Salve is exactly on similar line and his statement was recorded on 20/07/2017. It is rightly submitted by the learned counsel for the applicant that those statements were recorded when they were in custody of police, therefore, it cannot be said that those witnesses have given their statements voluntarily. The statement of Prashant is recorded after about more than 15 days i.e. after the arrest of the applicant. No explanation is offered as to why his statement is not immediately recorded though his name was mentioned in the statement of Krushna Dabhade. Thus, though, Extra Judicial Confession is an admissible piece of evidence, considering the fact that the statements of these witnesses were recorded when they were already detained by the police, their evidentiary value weakens considerably. Taken into account these facts, the applicant has made out a case for his release on bail.

9. Hence, the following order :

ORDER

- (i) In connection with C.R. No.I 107 of 2017 registered with Vadgaon Maval Police Station,

Pune, the applicant is directed to be released on bail 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) The applicant shall not in any manner tamper with the witnesses or evidence.
- (iii) The applicant shall attend the concerned police station on first Sunday of every month from 12.00p.m. to 02.00p.m. for a period of six months.
- (iv) Application stands disposed of accordingly.
- (v) Intervention application is disposed of accordingly.

(SARANG V. KOTWAL, J.)