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

BAIL APPLICATION NO.1174 OF 2019

Bunty @ Kishor Shivaji Waykar	.. Applicant
<i>Versus</i>	
State of Maharashtra	.. Respondent

**WITH
BAIL APPLICATION NO.1142 OF 2019**

Mayur Ramdas Sutar	.. Applicant
<i>Versus</i>	
State of Maharashtra	.. Respondent

Mr.A.P. Mundargi, Senior Advocate i/b. Priyal G. Sarda, Advocate for the Applicant in BA.1174 of 2019.

Mr.Aniket Nikam a/w. Mr.Piyush Toshnival i/b. Mr.Vivek N. Arote, Advocate for the Applicant in BA 1142 of 2019.

Mr.S.H. Yadav, APP for Respondent – State.

ASI Ambekar, Vadgao Maval Police Station, District – Pune, present.

CORAM : PRAKASH D. NAIK, J.

DATED : NOVEMBER 18, 2019.

P.C. :

The Applicants are seeking bail in connection with C.R.No.91 of 2018, registered with Vadgaon Maval Police Station, District – Pune for the offence punishable under Section 302 read with 34 of Indian Penal Code (“IPC”, for short).

2 First Information Report (“FIR”, for short) was lodged on 12th May, 2018 by Sachin Pagade. He is brother of deceased. It was stated that on 12th May, 2018, he was proceeding towards agricultural field. He noticed his brother Yogesh in an injured condition. He was taken to hospital. He was declared dead. It was further stated that there were differences on account of property with some persons, namely, Sonya Bhosale, Vadan Khandave, Mayur Sutar and Dhananjay Navlakha and it was suspected that they must have killed the brother of complainant.

3 During the course of investigation, supplementary statement of the complainant was recorded on 13th May, 2018.

4 Statement of the wife of the deceased was also recorded on 13th May, 2018. She has stated that at about 2:00 a.m. in the night since the dogs were barking she woke up and noticed that her husband was not there, however, she saw both the Applicants and one more person near the house who were making some movements. She also noticed a car. During investigation statements of other witnesses were recorded. Panchanama of recovery was conducted. On completion of investigation, charge-sheet was filed.

5 Learned Counsel appearing for the Applicant in B.A.No.1174 of 2019 submitted that there is no cogent evidence against the said applicant. He has been falsely implicated in this case. The applicants were involved subsequently. The statement of the wife of the deceased is suspicious as she did not inform the said fact to the brother of deceased who lodged the FIR. It is further submitted that there is no corroborative evidence to show the involvement of the Applicant. There is no evidence of assault. There is no eye witness to the incident. The version of the witnesses appearing in the statement namely Darshan Vahile and Swapnil Londhe is doubtful as the statements were recorded subsequently. In any case, they were not the eye witnesses to the incident. The place of incident is not the place where allegedly the accused were seen by the said witnesses. The wife of the deceased has not noted the number of the car which was allegedly parked in the night of 12th May, 2018. The CA report do not support the prosecution case. The blood which was allegedly found on the clothes of the said Applicant is either inconclusive or blood could not be detected. The weapons are not recovered from the Applicant. He further submitted that the CA report also refers to the cloths of the accused who had admittedly left the company of the other accused which shows that the case has been made up against the Applicant.

6 Learned counsel for the Applicant in Bail Application No.1142 of 2019 reiterated the submissions. In addition to that it is submitted that there is no cogent evidence against the said Applicant. There is no recovery of blood stained clothes of the said Applicant. There is no recovery of weapons. The applicants were deliberately implicated in the crime. The Applicant is in custody for 13th May, 2018.

7 Learned APP strongly opposed the Application of grant of bail. It is submitted that there is sufficient evidence to show the involvement of the Applicant. The wife of the deceased had noted presence of both the Applicants in a suspicious condition in the night of 12th May, 2018. It is further submitted that the statement of witness Darshan Vahile and Swapnil Londhe mentions that the deceased was in the company of the accused. He was called by the accused. One of the witness has taken the deceased where both the applicants and other accused were having drink. The witness thereafter left the said place. On the next date, the body of the deceased was found. It is further submitted that blood was traced in the vehicle which was used by the accused. The same was sent for forensic examination and human blood of "Group-B" was found in the Car. It is submitted that Blood Group of the deceased is also "B".

It is also submitted that the CCTV Footage was recovered by recording panchanama which refers to the car passing from the place where CCTV was installed. It is further submitted that there are criminal antecedents against the Applicant in Bail Application No.1174 of 2019 there are four cases registered and pending against him. Whereas, the Applicant in Bail Application No.1142 of 2019, there are five cases registered against him.

8 I have perused the material on record. The case is based on the circumstances. FIR was lodged by the brother of the deceased. The Applicants were arrested during the course of investigation. Statement of wife of the deceased was recorded on 13th May, 2018. She has stated that the Applicants were seen near the house along with a car at about 2:00 hrs. It is contended by the counsel for the Applicants that she had not informed about the said incident to the complainant. It is pertinent to note that the dead body of the deceased was found on 12th may, 2018. She was obviously under shock. The investigating authorities have recorded the statement of mother of the deceased and other witnesses who have stated that the wife of the deceased has disclosed to them about the said fact. Their statements were also recorded on 13th May, 2018. The statement of Darshan Vahile and Swapnil Londhe were recorded on 17th May, 2018.

They have stated that in the night of 12th May, 2018, deceased was called by the accused and the witness dropped him in their car at the place where accused were drinking. On the next day, the body of the deceased was found near his house. The said statement have to be read in consonance of the statement of the wife of the deceased. It is also pertinent to note that the blood found in the car was bearing the blood group of the deceased. There are antecedents against the Applicants. Although there is no eye witness to the actual assault, there are strong circumstance connecting the involvement of the Applicants in the crime. The discrepancies pointed out by the learned Counsel for the Applicant will be considered at the time of trial. *Prima facie*, involvement of the Applicants is disclosed. Hence, no case for grant of bail is made out.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application Nos.1174 of 2019 and 1142 of 2019 are rejected.

(PRAKASH D. NAIK, J.)