

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

BAIL APPLICATION NO.1279 OF 2019

Suleman Ismile Tadvi

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Bharat K, Manghani, Advocate for Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.
- Mr. K. M. Badare, PN 2208, Dighi Sagari Police Station, Dist. Raigad present.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JULY, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.34/2018 registered at Dighi Sagari Police Station on 15/11/2018 under section 302, 201 r/w. 34 of IPC.

2. The applicant is arrested on 17/11/2018 and since then he is in custody. The investigation in this case is over and chargesheet is already filed. The prosecution case is that, the

present applicant was having extra marital affair and illicit relationship with the accused No.2. The accused No.2 was married to the deceased Ramesh Ghag and therefore to eliminate him, the applicant, accused No.2 alongwith accused No.3 Majid committed the murder of the deceased Ramesh on 28/10/2018 near the crematorium at Diveagar. The FIR is lodged by one Sandeep Chavan who was a Police Constable attached to Dighi Sagari Police Station. He has stated in his FIR that on 15/11/2018, one Hamid Abdul Rehman Shardula met him. He informed that there was a murder committed on Diveagar beach and that he was aware as to who were the offenders. Pursuant to this information, first informant and other police officers went to the spot near the seashore. They found a knife and a spade near the bushes. Hamid Shardula told the first informant the present applicant alongwith accused No.3 Majid and accused No.2 had committed the murder of the deceased and had buried the dead body at that spot. The earth around the spot was excavated and the dead body was removed. Based on these allegations, the FIR was lodged. The post mortem conducted on the dead body showed

that the probable cause of death was due to severe head injury.

3. The investigation was carried out and the applicant was arrested on 17/11/2018 as mentioned earlier.

4. The prosecution story as mentioned earlier was that the applicant wanted to eliminate the husband of accused No.2 as the applicant was having illicit relationship with her. There are statements of three important witnesses in the chargesheet. The first one is Hamid Abdul Rehman Shardula who had given information to the police leading to registration of FIR. He has stated in his statement that on October 2018, accused No.3 Majid approached him with the proposal of offering money for committing murder of one person. According to this witness, Majid had told him that applicant wanted to eliminate that person because he was having relationship with that person's wife whose murder was to be committed. This witness declined the offer and told Majid not to do so as it was not proper. It is further stated in his statement that on 28/10/2018, around 4.40 p.m. he had seen

accused No.3 Majid near the seashore. He had left the place and had gone towards jungle. Within 10 to 15 minutes, the present applicant came on his two wheeler. He was followed by another person and a lady on a Scooty. All of them parked their vehicles near the crematorium and they went towards seashore. On 4/11/2018, he went around that spot. He found bad smell was emanating from there. He inspected the spot. He suspected that some serious offence was committed around that spot. On next day, he went to the house of accused No.3 Majid and informed him that the hand of the dead body had come out of earth and was indicating towards their offence. At that time, allegedly accused No.3 Majid asked him to keep quiet and offered him some money. This witness then was taken by Majid to the applicant who also offered him to pay money. However, since for 8 to 10 days money was not paid to this witness and therefore, he approached the police and gave information about the offence. After that, the investigation was carried out and the dead body was discovered. Another statement under section 164 of Cr.P.C. of this witness was recorded in which he had narrated the story regarding the incident

dated 28/10/2018 when he had seen the applicant, one lady and one man near the seashore. However, in this statement recorded under section 164 of Cr.P.C., he had avoided to mention anything about the money he was expecting from the accused.

5. There are two more witnesses namely Shakil Akharware and Sharafat Akalekar. Witness Shakil Akharware has stated that on 28/10/2018, accused No.3 Majid approached him and put forth a proposal that he would get money if he committed a murder. This witness tried to dissuade accused No.3 Majid. He has further stated in his statement that around 5.30 p.m. on that day he had seen present applicant near the seashore and he was followed by one person and a lady on Scooty. They had parked their vehicles near the crematorium and had gone towards the seashore.

6. Witness Sharafat Akalekar had narrated a similar story. However, he had not narrated about seeing anybody on 28/10/2018. He had only mentioned that, about one and half

months before the incident accused No.3 Majid had approached him and had made a similar offer.

7. Besides these three witnesses, there is another circumstance of recovery of stick at the instance of present applicant. The chargesheet also mentions recovery at the instance of accused No.2, wherein clothes were recovered. At the instance of accused No.3 iron rod was recovered. Thus, in short, in the entire material evidence against the applicant in this case.

8. Heard Mr. Manghani, Ld. Counsel for the applicant and Smt. Takalkar, Ld. APP for the State.

9. Ld. Counsel for the applicant submitted that the evidence against the present applicant is very weak. The witnesses are not reliable. Their story is improbable and unnatural. He submitted that the alleged recovery of stick at the instance of present applicant is not an incriminating circumstance. He further submitted that there was no reason to commit murder of the

deceased. There is nothing to show that the deceased was a hindrance for accused Nos.1 and 2 to maintain their relationship.

10. As against these submission, Ld. APP submitted that there is no reason to disbelieve three witnesses who were approached by the accused No.3 Majid. She submitted that there is sufficient material against the present applicant to show his complicity and therefore he does not deserve to be released on bail.

11. I have considered their submissions. The witness Hamid Shardula obviously is a non reliable witness. As per his own admissions, he was blackmailing the accused. It is only after he failed to receive money, according to him, he had approached police and had narrated the incident. This witness can hardly be termed as a reliable witness.

12. In any case, the story narrated by these three witnesses Hamid Shardula, Shakil Akharware and Sharafat Akalekar does

not appear to be probable. It is difficult to believe that accused No.3 Majid was just going on asking people including the applicant to commit murder. The other aspect of two witnesses Abdul Shardula and Shakil Akalekar having seen three persons including present applicant going towards the seashore does not take the prosecution case any further because these witnesses were not made to identify the accused No.2 as the lady who was accompanying those persons at that point of time. They were not even made to identify the person who was present on Scooty to be the deceased in this case. If it was the case of the prosecution that the deceased, accused No.2 and accused No.1 had gone together towards the seashore and thereafter the deceased was murdered then, it was incumbent on the investigating agency to establish the identity of these three persons who were seen by those two witnesses. Therefore, even this circumstance does not carry much weightage. In so far as recovery of weapon-stick is concerned, it was found on the spot, which was accessible to all. Therefore, merely relying on that recovery, it is rather difficult for the prosecution to advance its case. Other circumstances are against

the other accused and even those circumstances do not took prosecution case any further. In this view of the matter, considering very weak nature of evidence against the present applicant, 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.34/2018 registered at Dighi Sagari Police Station, on his executing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in like amount.
- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)