

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

BAIL APPLICATION NO.1303 OF 2019

Ramesh Sahebrao Sonawane

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Shailesh Kharat, Advocate for Applicant.
- Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 5th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.33/2018 registered at Niphad Police Station, District Nashik under Sections 302, 201 r/w. 120-B of IPC.

2. The FIR in this case is lodged by one Sahebrao Jat in respect of commission of murder of his brother Champalal. The FIR is lodged on 4/4/2018. He has stated in his FIR that deceased had left his house at around 11.00 p.m. on 3/4/2018 and then he had not returned till the next day afternoon. Therefore, the police were informed. When the first informant went to the house of the

deceased, he was told that the wife of the deceased was taken by the police to Niphad. The informant was told that the car of the deceased was parked near the road in front of hotel Raigad. When the informant reached there, he and others saw that the dead body in a burnt condition was lying in a ditch near that road. From the clothes, necklace, footwear and the car, the first informant had identified it as that of his brother Champalal. On this basis, the FIR was lodged. The investigation was carried out. The applicant was arrested on 5/4/2018. As on today, the investigation is over and the chargesheet is already filed. The post mortem report shows that there were nine injuries suffered by the deceased. There were incised wounds on and around neck. The cause of death mentioned in PM report was "death due to hypovolumic shock due to cut throat injury with head injury." There was fracture of temporo parietal bone as well.

3. The prosecution story as mentioned in the chargesheet was that, the applicant was having love affair with wife of the deceased. The deceased came to know about their relations and therefore, he used to assault and harass his wife. Being fed up of

this constant harassment, the wife of the deceased had told the applicant and her brother Kailash Puneekar to commit murder of the deceased. Both of them hired other accused Aakash Gangurde and Sanjay Baviskar to commit the murder. It is alleged that on 3/4/2018 the present applicant and the main accused Aakash Gangurde bought petrol in plastic bottle. The accused Gangurde on some pretext took the deceased to Manmad Railway Station and thereafter while coming back at Bokaddare field deceased was assaulted on his neck, head and throat with chopper. After committing his murder, accused poured petrol on the dead body and set it on fire.

4. Heard Mr. Shailesh Kharat, Ld. Counsel for the applicant and Mr. Prashant Jadhav, Ld. APP for the State.

5. With assistance of the Ld. APP, I have gone through the entire chargesheet. Ld. Counsel for the applicant submitted that there are no eye witnesses to the incident. Circumstantial evidence is not enough to connect the applicant with the offence. The only two circumstances i.e. motive and recovery of weapon

are alleged against the present applicant. However, neither of the circumstances is substantiated by evidence in the form of statements of witnesses. He submitted that the recovery at the instance of present applicant is not in consonance with the principles in respect of Section 27 of the Indian Evidence Act.

6. Ld. APP on the other hand submitted that the chain of circumstances is complete. There are three circumstances against him. There is motive to commit the murder, there is recovery of weapon at his instance and there is theory of 'last seen together'.

7. I have considered these submission. As far as theory of last seen together is concerned, the statement of witness Rahul Nikam shows that the present applicant and the main accused Aakash Gangurde were dropped by him near a car. The deceased was sitting in that car. The applicant as well as other accused Aakash Gangurde sat in the car and they proceeded together. This is the statement which the prosecution wants to rely upon to establish the theory of 'last seen together'. Rahul has seen the applicant and the other accused Aakash with the deceased at

around 11.30 p.m. As against this, there is a panchanama in respect of CCTV footage between 2.00 a.m. to 3.00 a.m. on 4/4/2018 of a platform of Manmad Railway Station. In that CCTV footage, at that time the deceased was seen in company of one person. According to that panchanama, deceased was accompanied by only one person. This panchanama was drawn in pursuance to the statement given by Aakash Gangurde. Prosecution case is that Aakash Gangurde had stated before the police that he and the deceased had come on platform No.3. The CCTV footage is in respect of platform No.3. Thus, even as per prosecution case, it was the other accused Aakash Gangurde who was seen last in company of the deceased between 2.00 to 3.00 a.m. in the night of 3/4/2019 and 4/4/2019. Thus, the present applicant was not seen in CCTV footage. Therefore, the circumstance of 'last seen together' is not an incriminating circumstance against the present applicant. It is a circumstance against the co-accused Aakash Gangurde.

8. The recovery of weapon is also not an incriminating circumstance against the present applicant because in his

statement he has not stated that he had concealed the weapon at a particular spot. He had stated that he had thrown away the weapon and the plastic bottle. Thereafter, he led the police party to Bokaddare field and thereafter had produced a chopper and a plastic bottle from behind a stone. He had not stated that he had concealed those weapons. The spot is accessible to all. Thus, the circumstance of recovery of weapon is not clearly established against the applicant. He had not stated in chargesheet that he had concealed the weapon behind a particular stone. The place was accessible to all. His statement merely shows that he had thrown away those articles.

9. The last circumstance regarding motive does not travel beyond the realm of suspicion. There is no witness indicating that anybody had seen the applicant in company of the wife of the deceased. Except suspicion and general statement mentioned in the FIR and statements of relatives of the deceased, there is nothing to show that the applicant was having any affair with the wife of the deceased. Thus, the evidence against the present applicant is very weak and therefore, I am inclined to grant bail to

the present applicant. The observations made in this order are made only for the purpose of deciding the present bail application. The Trial Court shall not be influenced by these observations in deciding the trial. Hence, the following order.

ORDER

1. The applicant is directed to be released on bail in connection with C.R. No. 33/2018 registered at Niphad Police Station, District Nashik, on his executing P.R. Bond in the sum of Rs.25,000/- (Rs.Twenty Five Thousand Only) with one or two sureties in the like amount.
2. The application is disposed of.

(SARANG V. KOTWAL, J.)