

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

BAIL APPLICATION NO.1402 OF 2019

Ganesh @ Pappu Pandurang Damase Applicant

versus

The State of Maharashtra Respondent

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- Mr. Priyal G. Sarda, Advocate for Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.
- Mr. K. K. Bhalekar, PSI Ghodegaon Police Station, Pune (Rural) 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.37/2018 registered at Ghodegaon Police Station, Pune (Rural) under section 302, 201, 364 r/w. 34 and 75 of IPC.

2. The FIR is lodged by PSI Gaikwad. He has stated that when they were on patrolling duty on 2/2/2017, they received

information that one person by name Sunil Kamble who was externed from entering the area is roaming in that area. Therefore, the police party arrested him when he was found in that area. He confessed about old offences which he had committed in the year 2011. He gave information that one Pintu @ Sambhaji Ghothe was his co-brother. He had misbehaved with Sunil's wife and therefore, Sunil decided to commit his murder. He alongwith his friends took Pintu on some pretext in his car. According to Sunil, he was accompanied by the present applicant, Sunny Jadhav and Raju Yadav. Said Pintu was taken to Bhimashankar, Taluka Ambegaon, District Pune. On the way, he was mercilessly beaten. Then he was taken out of the car and again was beaten by branches of trees and thus the accused committed his murder. His dead body was thrown in the valley. Thereafter, Pintu's mother Kantabai was constantly inquiring with Sunil regarding disappearance of Pintu. Therefore, even she was taken in their car by the same persons. She was taken near Lonavala and she was also murdered. Her dead body was thrown in a valley near Dudhiwari Khindghat, Lonavala. Based on this information given

by Sunil Kamble, the FIR was registered.

3. The investigation was carried out. The applicant was arrested on 8/2/2018 and since then, he is in custody.

4. The investigation papers included the statement of one Bharati, the wife of deceased. She has stated in her statement that in the year 2011, Sunil Kamble the present applicant, Sunny and Raju came to their house and had taken the deceased with them in their car. Thereafter, Pintu had not returned. She has stated that Sunil Kamble confessed to her that they had committed Pintu's murder and then they had also committed murder of Pintu's mother Kantabai. He then pressurized Bharti to marry him. Sunil and Bharti got married. After a few months, there was dispute between them and therefore, she left him and married another person. During investigation, her statement was recorded on 3/2/2018 when she gave information about the incident which had occurred in the year 2011. Besides this, there is a statement of one Manisha Bagav. She was a friend of another accused Sunny

Jadhav. She has stated that in July 2011, Sunny Jadhav had confessed to her that he alongwith Sunil Kamble, Raju Yadav and the present applicant had committed murder of Pintu @ Sambhaji Ghothe and his mother.

5. Investigation was carried out to trace the information in respect of dead bodies which were recovered in that area in the month of July 2011. The investigation revealed that a dead body was found in July 2011 at the spot described by shown by the main accused Sunil. In respect of that dead body ADR was prepared and post mortem was conducted. In the post mortem report, the cause of death was given as hemorrhagic shock due to multiple injuries. The dead body of Kantabai was not found. It is case of the prosecution that dead body found in July 2011 was that of Pintu alias Sambhaji. Based on these allegations, the chargesheet is filed. The investigation is over.

6. Heard Mr. Sarda, Ld. Counsel for the Applicant and Smt. Takalkar, Ld. APP for the State.

7. Shri. Sarda submitted that evidence against the present applicant is very weak. The evidence which is collected by the investigating agency is collected after long period of eight years. Therefore, the statement of the witnesses are not reliable. The witnesses on their own had not approached the police for over a long period. He submitted that the police have not established the identity of the dead body. He further submitted that the confession given by Sunil before the police is inadmissible. Other circumstances are also weak and therefore, he deserves to be released on bail.

8. As against these submission, Ld. APP pointed out the investigation carried out so far and she relied on the statements of Bharti and Manisha. She stated that Bharti's statement shows that deceased was last seen together in the company of the present applicant and others. Statement of Manisha shows that another accused Sunny Jadhav had made extra judicial confession involving the present applicant. The statements made by these two witnesses are admissible and sufficient to attract conviction.

9. I have considered these submissions. There is no dispute that none of the witnesses have come forward to give their statements for around eight years. The confession made by main accused Sunil Kamble to the police officers is inadmissible. The other circumstance of extra judicial confession made to Manisha by another accused Sunny Jadhav is also a weak piece of evidence. Section 30 of the Evidence Act provides that confession of the co-accused is admissible. However, such confession can only be used to lend assurance to the conclusion of guilt reached by the Court after marshalling other evidence. Moreover, this witness has given her statement after a long gap of eight years. She on her own had not come forward to give her statement. Therefore, this is a weak piece of evidence. The statement of Bharti similarly suffers from infirmity and it is recorded after eight years. This witness was married to the deceased and then she got married to the main accused. Her statement does not give the exact date when the deceased was seen last in company of the present applicant and others. The prosecution evidence also does not show the exact place and time of death of the deceased. Therefore, unless the last

seen theory is co-related with the proximity of time and place of the offence, that circumstance by itself cannot be a very strong circumstance against the accused. Considering all these aspects, the case against the present applicant is extremely weak. Therefore, he deserves to be released on bail. However, these observations are made only for the purpose of deciding this bail application and the Trial Court shall decide the trial based on the evidence produced before that Court. At this stage, I am inclined to grant bail to the present applicant. Hence, the following order.

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R. No.37/2018 registered at Ghodegaon Police Station, Pune (Rural), 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.)