

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

CRIMINAL BAIL APPLICATION NO.1591 OF 2019

Shivaji Bhaguji Dhumal

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr. Ghanasham S. Jadhav, Advocate for Applicant.
- Mr. Rajan Salvi, APP for the State/Respondent.
- Mr. Navnath S. Bhagwat, PC 1954 Bhigwan Police Station, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 7th AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.I-257/2018 registered with Bhigwan Police Station, Pune Rural under Section 302 of IPC.

2. The FIR is lodged by the applicant's wife on 4/11/2018. She has stated in her FIR that she got married with the applicant on 25/12/2015. After few days, the couple started staying separately at Kumbhargaoon. The applicant was addicted to

liquor. He used to suspect her character and used to assault her. On 13/10/2016, the informant gave birth to their son. The applicant continued with his bad behaviour. Therefore, the informant went to reside at her parental house. Even at that place, applicant used to visit under influence of liquor and used to abuse the informant and her family. She has mentioned that the applicant used to say that he was not father of that son. The first informant had filed divorce proceedings in January 2018 in Court at Bhigwan. The informant as well as the applicant used to attend the dates fixed for hearing. On 7/8/2018, the applicant forcibly took away her son with him. On 13/10/2018, again he had brought the son to the Court and took him back after the Court proceedings were over on that day. On 4/11/2018, the informant was told by her relative that her son had fallen in water and was taken to the hospital. She went to the hospital at Bhigwan. Her son was dead. She made inquiry with the native people and came to know that he had fallen in a reservoir of water of Ujani dam. The informant suspected that applicant had threw him in the water and therefore, she lodged this FIR.

3. The applicant was arrested on 4/11/2018 and since then, he is in custody. The investigation is over and chargesheet is filed. The cause of death was mentioned as “death due to drowning”.

4. Heard Mr. Ghanasham Jadhav, Ld. Counsel for the Applicant and Mr. Rajan Salvi, Ld. APP for the State.

5. Ld. Counsel for the applicant submits that the statement of eye witness Kumar Nagare is recorded under Section 164 of Cr.P.C. in which he has exonerated the applicant. Kumar Nagare in his statement has stated that the applicant was trying to seek help to save his son who was drowned. He also relied on statement of the informant recorded under Section 164 of Cr.P.C. In that statement, she has based her suspicion on the information given by Kumar Nagare. He, therefore, submitted that when Kumar Nagare himself has stated that it was an accident, informant's suspicion was not correct. He further submitted that the person who had taken out the boy from water had also given a statement and he has stated that the boy was drowning in the

water and the applicant was shouting.

6. As against this, Ld. APP pointed out that there are three eye witnesses whose statements are recorded during investigation. They are Mahadev Dhumal, Dhananjay Dhumal and aforesaid Kumar Nagare. They have stated before police that they were fishing in that pond. They saw that at around 7.00 a.m. present applicant brought his son on a motorcycle. He parked his motorcycle at the road side. He climbed down the slope and drowned his son in water and thereafter, he climbed up and pushed his motorcycle in the water. After doing all this, he ran towards a temple. Few boys came there. They went to the spot where the boy as drowned and pulled him out. However, the boy did not survive. These statements are consistent. The person Amol Dhavale who had taken out that boy has also given his statement that he had not seen the actual incident but he had seen the applicant was running towards the temple. On inquiry made by this witness, applicant told that accidentally the son and he himself fell down with his motorcycle in the water.

7. I have considered all these submission and the statements referred hereinabove. Though in the statement recorded under Section 164 of Cr.P.C. witness Kumar Nagar has tried to save the applicant, his as well as other witness's statement recorded under Section 164 of Cr.P.C. has clearly made out the case against the present applicant. They had stated that applicant had himself thrown the boy in the water. Thereafter, he made a show of meeting with an accident by pushing his motorcycle in the water. Thereafter, he ran away from the spot. Only after that, people from the locality came there and pulled out the boy from water. Thus, there is sufficient material against the present applicant showing his complicity in the offence. At this stage, there is no reason to doubt the truthfulness of the statements given by the eye witnesses. Eye witnesses were independent witnesses and they had actually seen the incident. In this view of the matter, no case to grant of bail is made out. Hence, application is rejected.

(SARANG V. KOTWAL, J.)