

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

BAIL APPLICATION NO.1622 OF 2019

Rohan @ Bhaiyya Anil Chavan

.... Applicant

versus

The State of Maharashtra

.... Respondent

- Mr. Priyal Sarda I/b. Yogita S. Kuveskar, Advocate for the Applicant.
- Smt. A. A. Takalkar, APP for the State/Respondent.
- Mr. Nanaware, PSI, Loni Kalbhor Police Station, Dist. Pune, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JULY, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.838/2019 registered at Loni Kalbhor Police Station, Pune under Section 302 of IPC.

2. The FIR is lodged by one Meghraj Kalbhor who was younger brother of the deceased Abhijeet Kalbhor. The FIR is lodged on 2/11/2018. It is mentioned in the FIR that the

deceased had gone to meet his friend Vipul Nage at about 4.30 p.m. on 2/11/2018. Thereafter, he did not return. The informant inquired with Vipul. Vipul told him that deceased had met him. The deceased was to return his motorcycle. But he did not return it instead took Rs.500/- as loan from Vipul and had left Vipul's house. On the same day, i.e. on 2/11/2018, at about 3.45 p.m. police informed the first informant that Abhijit was lying dead at the place between new and old canal at Sidrammala. The dead body was sent for post mortem examination. The PM notes show that he had suffered one crushing injury on the head. The cause of death was 'head injury'. A stone was lying at the spot near the head of the dead body.

3. The investigation was conducted and the present applicant was arrested on 4/11/2018. Before that, the main accused Sachin Kadam was arrested on 3/11/2018.

4. It is the prosecution case that the main accused Sachin Kadam suspected that the deceased had ill intention towards

Sachin's wife. The investigation was carried out and the chargesheet is filed.

5. Heard Mr. Sarda, Ld. Counsel for the applicant and Smt. Takalkar, Ld. APP for the State of Maharashtra.

6. Shri. Sarda submitted that there is no material against the present applicant. Though there are statements of two eye witnesses involving the present applicant, their statements were recorded after the main accused was arrested and even in their story, they have not attributed the main role to the present applicant. He submitted that there is no motive attributed to present applicant. Therefore, he deserves to be released on bail.

7. Ld. APP submitted that statement of eye witnesses specifically named the present applicant. They have stated that the applicant had accompanied main accused and therefore, his involvement is more than clear.

8. I have considered the submissions made by the parties. I have also perused the statements of these eye witnesses. They are Prakash Sharma and Sujata Kumbharkar. Eye witness Prakash Sharma has stated that he had gone to the temple which was situated near the spot of incident and the other eye witness Sujata Kumbharkar stated that she was returning home and was travelling in the same area which was near the spot of incident. Both of them had seen the main accused Sachin Kadam and the present applicant walking towards the person who was sleeping on the ground. Accused Sachin was carrying a big stone in his hand and the present applicant was accompanying him. Accused Sachin threw that stone on the head of the person who was sleeping. Both these eye witnesses got scared and left the place. After two days, they themselves came to the Police and gave their story. Their statements were recorded.

8. It is important to note that the statements of these two eye witnesses were recorded after the main accused Sachin Kadam was arrested. Before that, there was hardly any material with the

police to connect the present applicant with the alleged incident. Similarly, the applicant's name has transpired only in the statements given by these two eye witnesses.

9. Even accepting the story mentioned by the eye witnesses to be true, it shows that the actual assault was committed by the main accused Sachin Kadam. Though the present applicant was walking with him, he is not attributed any single overt act. The effect of his accompanying the main accused carrying the stone, will have to be decided at the conclusion of the trial. At this stage, the fact remains that no specific role was attributed to the present applicant. Similarly, even the motive alleged is only against the main accused Sachin Kadam. The chargesheet however does not reveal any material which shows that such motive indeed was entertained by the main accused Sachin Kadam.

10. There is another circumstance against the present applicant. There is a statement of Prabhakar Gaichode to whom

allegedly the applicant had made an extra judicial confession. Reading of his statement shows that this witness Prabhakar was not knowing either of the accused. Therefore, it is very difficult to understand as to why the applicant would approach him and tell him that he and his friend had committed murder of the deceased. Therefore, at this stage, this circumstance appears to be very doubtful. Considering the above discussion, the applicant has made out a case for his release on bail. Hence, the following order.

ORDER

1. The applicant is directed to be released on bail in connection with C.R.838/2019, registered at Loni Kalbhor Police Station, Pune, on his executing P.R. Bond of Rs.25,000/- with one or two sureties in like amount.
2. The application is disposed of.

(SARANG V. KOTWAL, J.)