

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

BAIL APPLICATION NO. 1701 OF 2019

Vishal Sunil Itkar & Anr. Applicants

versus

The State of Maharashtra Respondent

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- Mr. Vijaykumar R. Garad, Advocates for Applicants.
- Mr. Prashant Jadhav, APP for the State/Respondent.
- Mr. P. B. Kedar, PSI, Barshi City Police Station present.

CORAM : SARANG V. KOTWAL, J.
DATE : 21st AUGUST, 2019

P.C. :

1. The applicants are seeking their release on bail in connection with C.R. No.427/2018 registered with Barshi City Police Station, District Solapur under Sections 302, 363 and 120-B r/w. 34 of IPC.

2. The FIR is lodged by one Sunil Pawar. He has stated in his FIR dated 15/8/2018 that his son aged 16 years had left his house at around 5.00 p.m. on 14/8/2018. He had gone out for a

stroll but he did not return. Therefore, FIR was lodged against unknown persons for abducting him. A dead body was found. It was decomposed. However, the clothes and other articles on the body were shown to the first informant. The first informant identified the dead body as that of his son. Thereafter, the offence of murder was added to the other sections under which the FIR was lodged. The investigation was conducted and the chargesheet was filed. The applicants were arrested on 24/8/2018 and since then, they are in custody.

3. Heard Mr. Vijaykumar Garad, Ld. Counsel for the Applicants and Mr. Prashant Jadhav, Ld. APP for the State.

4. Mr. Garad submitted that there are no eye witnesses to the incident. The motive alleged against the applicant is weak. The entire chargesheet does not travel beyond suspicion against the present applicants. He submitted that the investigation is over and no purpose will be served by detaining the applicant any further.

5. As against these submission, Ld. APP pointed out that there are strong circumstances against the present applicant and he particularly relied on the statement of one Ambadas Shinde.

6. I have considered these submission. I have perused the statement of Ambadas Shinde. His statement was recorded on 24/8/2018 i.e. after 10 days. He has explained that he did not give the statement earlier because the applicant had threatened him. He has stated in his statement that on 14/8/2018 at 4.00 p.m. he had seen the deceased in the company of the applicants and Nilesh Itkar near Gavati Galli. At around 6.00 p.m., the applicant Vishal made a phone call to this witness and informed him that they had committed murder of Ganesh. At about 7.00 p.m., applicants and Nilesh Itkar came to his shop and told that they had taken the deceased behind Mastur hospital and had committed his murder. They informed that the deceased had helped one Vijay Mudde to get engaged with the applicant's cousin Anjali. Therefore, they wanted to commit murder of Ganesh as well as Vijay. They were planning to commit murder of Vijay.

This witness was threatened that his life and his family's life would be in danger if he disclosed this fact to anybody. On the next day, this applicant No.1 again approached him and again threatened him not to tell this to anybody. Thus, this statement is on two circumstances i.e. the last seen theory as well as the extra judicial confession made by the accused. This witness have explained as to why he did not approach the police for giving the statement. The post mortem shows that the death was caused due to 'asphyxia due to drawing'. The dead body was found in a pond behind the Mastud hospital near a field of one Mulla. Thus, there is proximity of time and place where the witness had seen the deceased in company of the applicants. Thus, there is sufficient material against the present applicants. Therefore, I am not inclined to grant bail to the applicants. Hence, application is rejected.

(SARANG V. KOTWAL, J.)