

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

CRIMINAL BAIL APPLICATION NO. 1873 OF 2019

Mr. Sanjay Vishnu Ubhe Applicant

Versus

The State of Maharashtra Respondent

Mr. A. P. Mundargi, Senior Advocate I/b. Vipin Bidkar for
Applicant.

Smt. J. S. Lohokare, APP for the State/Respondent.

Mr. S. Y. Mujaavar, ASI, Paud P.Stn., present.

CORAM :SARANG V. KOTWAL, J.

DATE :09th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. I 75/19 registered with Paud Police Station, Pune, under sections 302 and 201 of the Indian Penal Code.

2. The FIR is lodged on 26/02/2019 by Maruti Kokare, who was Police Patil of village Tamhini, Dongarwadi, Tal. Mulshi, Dist. Pune. The FIR mentions that a dead body was found around

12.00p.m. on that day on Tamhini – Mugav road. The dead body was partially burnt and there were injuries on his head. On this basis, the FIR was lodged and investigation was carried out. The applicant was arrested on 15/03/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. The prosecution story pertains to murder of one Shridhar Gadekar. The prosecution's case is that the main accused Mallikarjun was under impression that the deceased Shridhar was harassing his brother's wife Poornima. Mallikarjun took help of the present applicant and one other accused Yogesh Pimpalkar. With their assistance, he took the deceased to a secluded spot in Ghat and committed his murder by assaulting him. The Postmortem shows that the deceased had suffered 7 injuries. Three of them were CLWs and cause of death was mentioned as “Cardio-Respiratory arrest due to hypovolemic shock due to grievous injury on head and burns. It is the prosecution case that after assaulting the deceased the accused had set him on fire.

4. I have heard Shri. A. P. Mundargi, Senior Advocate for the applicant and Smt. J. S. Lohokare, learned APP for the State.

With their assistance, I have gone through the entire charge-sheet annexed to this application.

5. Shri. Mundargi submitted that there are absolutely no incriminating circumstances against the present applicant. The only circumstance alleged by the prosecution is recovery of his own clothes at the instance of present applicant. He submitted that till date there is no connecting C.A. report. The panchanama does not show that there were blood stains on the clothes. He submitted that the applicant had no motive to commit murder. There are no eye witnesses to the incident, therefore, on this weak piece of evidence the applicant cannot be detained in custody during the course of trial. Learned APP opposed to this application and submitted that circumstances against the present applicant are sufficient to establish his guilt.

6. I have considered these submissions. The brother of the deceased had lodged a report in respect of his missing from 25/02/2019. This report was lodged on 26/02/2019. Thereafter this witness Amit has given his statement on 10/03/2019. In that statement he has stated that the deceased had left his house on

25/02/2019 at 7.30a.m. and thereafter had not returned. On 09/03/2019, the officers of Datta Nagar police station informed him about finding of dead body. This witness and other witnesses identified the dead body as that of Shridhar.

7. There are statements of two witnesses namely Shivlal Solanki and Geeta Solanki. According to the prosecution case, on 25/02/2019, the main accused Mallikarjun, co-accused Yogesh and the present applicant had purchased a plastic can and matchbox from their shop. The statement shows that the police had brought all these accused to their shop and had told them the story instead asking the witnesses about the events which had taken place on 25/02/2019. There are statements of witnesses Rohidas and Vitthal which show that on 25/02/2019, the main accused Mallikarjun had purchased petrol worth Rs.400/- and that petrol was carried in a plastic can. This petrol pump was near Tamhhini Ghat. These witnesses have not stated that they had seen the present applicant with main accused Mallikarjun. Therefore, this circumstance can, at the most, be used only against the main accused Mallikarjun. Thus, there are no witnesses who

had seen the present applicant with main accused Mallikarjun. The only circumstance against the present applicant is alleged recovery dated 20/03/2019. It is prosecution case that, at the instance of present applicant and after recoding his statement those clothes were seized from a spot near one bridge. The clothes were concealed at the spot in a carry bag. The perusal of statement of the applicant shows that the place where he had concealed his clothes was not mentioned in that statement. Therefore, strictly speaking, at this stage, it is difficult to observe that there was authorship of concealment at a particular spot and the clothes were recovered at his instance, on the basis of statement made by him, from that spot. Even otherwise, it is the only circumstance against him. Hence, the evidence against the applicant is very weak. Therefore, I am inclined to grant bail to the applicant.

8. Hence, the following order :

ORDER

- (i) In connection with C.R. No.I 75 of 2019 registered with Paud Police Station, Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/-

(Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

(ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)