

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

BAIL APPLICATION NO.1956 OF 2019

Prakash Namdeo Shinde Applicant

versus

The State of Maharashtra Respondent

**WITH
CRIMINAL APPLICATION NO.1122 OF 2019
IN
BAIL APPLICATION NO.1956 OF 2019**

Raghunath Babasaheb Kandekar ...Intervenor

IN THE MATTER BETWEEN

Prakash Namdeo Shinde Applicant

versus

The State of Maharashtra Respondent

.....

- Mr. Rahul S. Kate, Advocate for Applicant.
- Mr. Prashant Jadhav, APP for the State/Respondent.
- Mr. Harshad M. Inamdar, Advocate for Intervener.
- Mr. Kishore S. Talekar, PC 2117, Tembhurni Police Station, Solapur present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 19th AUGUST, 2019**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.97/2019 registered with Tembhurni Police Station, Solapur under Sections 302, 201, 143 and 147 r/w. 149 of IPC.

2. The FIR is lodged by Raghunath Kandekar who was son of the deceased Babasaheb Kandekar. He has stated in his FIR dated 17/2/2019 that the present applicant was a relative of the deceased. He had purchased small piece of land and had constructed few shops. One Samadhan Vyavhare was obstructing the applicant's construction. The applicant was entertaining suspicion that Samadhan was instigated by the deceased and the first informant. There was dispute between the applicant and the first informant and his father. On 16/2/2019, the first informant had gone to Tembhurni Police Station. At that time, the present applicant was also called to the police station. The police had tried to settle their issues. In the night, at 10 o' clock again the first informant as well as present applicant met in the presence of

respectable people from the locality. At that time, the applicant was non committal about settlement talks. The first informant had given dinner to his father at around 11 o' clock on 16/2/2019. In the morning, when he went to his farm, he saw that his father was hanging from a tree. The police were informed. The dead body was taken for post mortem. According to the first informant, the post mortem notes showed that the deceased had died due to throttling and therefore, this FIR was lodged. A strong suspicion was expressed against the present applicant, his son, Samadhav Vyavhare and Amol Patil.

3. The applicant was arrested on 17/2/2019 itself and since then, he is in custody. The investigation is carried out and the chargesheet is filed.

4. Heard Mr. Rahul Kate, Ld. Counsel for the Applicant, Mr. Harshad Inamdar, Ld. Counsel for the Intervener and Mr. Prashant Jadhav, Ld. APP for the State.

5. Mr. Kate submitted that it is a case of circumstantial evidence. There is no direct evidence. He submitted that even the circumstantial evidence is falling much short and does not show that the applicant is in any manner connected with the commission of the alleged offence.

6. Mr. Inamdar and Mr. Jadhav opposed his submission. With the help of Ld. Counsel for the parties, I have gone through the charge annexed to this application. As rightly mentioned by the Ld. Counsel for the applicant, the case is based purely on circumstantial evidence. The first circumstance is in respect of motive which the applicant was allegedly entertaining against the deceased. The FIR itself shows that the applicant was suspecting that the first informant and his father were instigating one Samadhan Vyavhare against the present applicant thereby causing obstruction in his construction. Apart from motive, there is hardly any circumstance mentioned against the present applicant. Even the motive is not strong enough because as per FIR, in the evening both the parties had gone to police station and the police had tried

to settle the matter between the parties. At that time, nothing further had taken place escalating the dispute between the parties. Therefore, there was no immediate reason to commit murder of the deceased. The post mortem notes show that the deceased had suffered about 10 injuries. The cause of death was mentioned as "Asphyxia due to compression of neck. Viscera and blood was preserved for chemical analysis." The daughter-in-law and the widow of the deceased have narrated the same story as narrated by the first informant. There are two witnesses whose statements have to be considered carefully. The first statement is of Balaji Vyavhare. His statements are recorded under Section 161 of Cr.P.C. as well as under Section 164 of Cr.P.C. In the statement under Section 161 of Cr.P.C., this witness Balaji Vyavhare has stated that on 17/2/2019, in the early hours i.e. at 3.30 a.m. while he was going towards Bhairavnath Sakhar Kharkhana, he had seen the present applicant, Vishal Shinde and one unknown person going towards the field of the first informant. This witness had given him a call but the applicant had ignored him. Thus, presence of the applicant was shown in at the early morning when

he had seen the applicant near the spot. This witness's statement is also recorded under Section 164 of Cr.P.C. In that statement, he has not stated the same story. He has not stated that he had seen the applicant near the spot at about 3.30 a.m. on 17/2/2019. Instead, he has stated that he had seen the present applicant, Vishal Shinde and one more unknown person at 3.30 p.m. on 16/2/2019. He has completely changed his story. He has changed his version by about 12 hours. Thus, obviously this witness cannot be relied on for any purpose.

7. There is another witness namely Sakharbai Kandekar who was mother of the deceased. She had stated in her statement that on 16/2/2019, she was staying in the shed in a field. She had realised that somebody had come there. She asked him about his identity. According to her, that person told that he was Pintu Shinde i.e. the present applicant. Thereafter, she had gone to sleep. Apart from this, she has not stated anything in her statement. Her statement does not take the prosecution case any further firstly because it does not stand to reason as to why the

applicant would leave some evidence which would cause her fix his identity and secondly, there was no reason for him to disclose his identity if he had committed the murder around that time. The statement is very vague and cannot be relied on to fix the complicity of the present applicant in connection with the crime. Apart from this, there is absolutely no material against the present applicant. Therefore, there is no justification to keep the applicant in custody during the entire period of trial. The applicant deserves to be released on bail. Hence, the following order.

ORDER

1. The applicant is directed to be released on bail in connection with C.R. No.97/2019 registered with Tembhurni Police Station, Solapur, on his executing P.R. Bond in the sum of Rs.25,000/- (Rs.Twenty Five Thousand Only) with one or two sureties in the like amount.
2. The application is disposed of.

(SARANG V. KOTWAL, J.)