

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1981 OF 2019

Sushilkumar Suresh Shinde

Applicant

versus

The State of Maharashtra

Respondent

Mr.Shirish S. Gadge with Sagar S. Tambe for applicant.

Mr.Prashant Jadhav, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th November 2019

PC :

1. The applicant is arrested in connection with CR No.312 of 2017 registered with Phaltan Rural Police Station, District Satara, for offences under sections 302 and 201 of Indian Penal Code on 5th December 2017.

2. The prosecution case is that on 3rd December 2017 an unknown dead body was found at village Naikbomwadi within the jurisdiction of Phaltan Rural Police Station. Information was given to Police. The FIR was registered. On 5th December 2017 the statement of Sunil Thakur who is the brother of the deceased, was recorded. In the said statement it was stated by him that he received information from one Chikya that he had seen his brother in the company of the accused. On receipt of said information he proceeded and found that the deceased was with the accused. His brother was made to sit in the vehicle by the accused, who stated that they are proceeding to attend a marriage ceremony. One of the accused also threatened

him. Subsequently, as stated above, the dead body of the victim was recovered. It is alleged that there was enmity between one of the accused and the deceased on account of supremacy. The deceased was a historysheeter and was recently released on bail. It is alleged that the deceased was taken to the place of incident and was hit by a stone on his face, which has resulted in his death.

3. Learned counsel for applicant submitted that the case is based on circumstantial evidence and there is no authentic and direct evidence against the applicant. The prosecution is relying upon the evidence in the nature of last seen together and recovery of car alleged to have been used in the crime. He submitted that the applicant is being arrested out of mistaken identity. The name of the person who has been referred to in the statement of Sunil Thakur is Sushant @Sushya Shinde, R/o.Bhaiyyawadi near Kunalwadi, whereas name of the applicant is Sushilkumar Shinde who is resident of Pimpre Gurav, District Pune, which address is also reflected in the charge sheet. It is further submitted that there is no other corroborative evidence to establish his involvement in the crime. The car alleged to have been recovered from him do not contain any incriminating evidence. There is no other evidence in the nature of blood stain clothes etc.

4. Learned APP, however, submitted that the person who has been referred to by the witness Sunil Thakur and the applicant, is one and the same. There is evidence in the nature of recovery of vehicle used in the crime and the evidence of last seen together. Learned APP also pointed out the statement of one Balu Lokhande who had stated that the co-accused Prakash Ombase had approached him for hiring a

vehicle, which according to him was to be driven by the applicant and it is alleged that the same vehicle was used in the crime.

5. I have perused the documents on record. The prosecution is primarily relying on the evidence of last seen together. It is true that there is some discrepancy with regards to the name which may be appreciated at the time of trial. The statement of Sunil Thakur states that the information that the victim was in company with the accused, was provided to him by one Chikya. However, the statement of the said person has not been recorded and there is no plausible explanation for not doing so. Although the alleged car has been recovered at the instance of applicant, the said vehicle belongs to the witness Balu Lokhande. Nothing incriminating was found in the vehicle. The statement of Balu Lokhande could only indicate that the co-accused has informed that vehicle will be driven by the applicant. There is no corroborative evidence in the nature of CDR, eye witness, recovery of blood stain clothes etc.. There are no reported antecedents against the applicant. The applicant has been in custody from 5th December 2017.

6. Considering the aforesaid circumstances, case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1981 of 2019 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.312 of 2017 registered with Phaltan Rural Police Station, District Satara, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall stay outside the jurisdiction of Phaltan Rural Police Station till further orders;
- (iv) The applicant shall regularly attend the Trial Court proceedings on the dates of hearing of the case;
- (v) The applicant shall not tamper with the evidence.

(PRAKASH D. NAIK, J.)

MST