

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

CRIMINAL BAIL APPLICATION NO. 2022 OF 2019

Manoj Basappa Aakkale

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Aniket Nikam I/b. Vivek N. Arote for Applicant.

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

Mr. N. M. Ravate, HC/506, Rajgad P.stn. Pune Gramin, present.

CORAM :SARANG V. KOTWAL, J.

DATE :11th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. I 17/19 registered with Rajgad Police Station, under sections 302, 201, 143, 147, 148, 323 r/w. 149 of the Indian Penal Code.

2. The prosecution case is in respect of murder of one Prakash Pawar. The applicant was arrested on 20/01/2019 and

since then he is in custody. The investigation is over and the charge-sheet is filed. According to the prosecution case, in the night between 18/01/2019 and 19/01/2019 the accused and the deceased had gone to Parwadi, Tal. Bhore, Dist. Pune to attend wedding ceremony. While coming back, there was a quarrel between deceased and one Aniket Shirke. The quarrel escalated and allegedly the accused assaulted deceased with stones. He had suffered injuries to his head and succumbed to his injuries. Postmortem shows that he had suffered four injuries, out of which, there was one depressed fracture. The cause of death was mentioned as 'due to acute cardiorespiratory arrest with hemorrhagic shock and neurogenic shock due to head injury with intra cerebral hemorrhage'.

3. Heard Shri. Aniket Nikam, learned counsel 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.

4. Learned counsel for the applicant submitted that there are absolutely no incriminating circumstances against the present applicant. The only relevant material the prosecution is relied on are three circumstances; (i) 'last seen together with the deceased, (ii) the alleged Extra Judicial Confession made to the mother and (iii) recovery of clothes. He further submitted that all these circumstances independently and even together do not point to the involvement of the applicant. Learned APP opposed this application and submitted that the chain of circumstantial evidence is complete and the applicant's involvement is made clear.

5. I have considered these submissions. The FIR is lodged by Police Patil Subhash Limhan. He has stated that he was Police Patil of village Parwadi and he was informed that on 19/01/2019 at about 7.15, dead body of the deceased was found in the field of one Baburao Bhagat. There was one motorcycle besides the dead body.

6. The statement of one Suraj Shirke is relevant in this context because he has spoken about the deceased and accused attending his wedding ceremony. He has stated that, on 18/01/2019, the deceased had come to his house at Parwadi, at around 11.00p.m. He was accompanied by the present applicant, Aniket Shirke, Anand Sagle, Aakash Gujar and Aakash Shirke. He has mentioned that other friends had also attended his wedding ceremony and all of them, after having dinner, had left for Bhor. According to the applicant, this is the only evidence showing that deceased was last seen in the company of the accused. Ordinarily, in a given case, the circumstance of last seen together in the company of deceased is an incriminating circumstance against the accused, if the deceased had died within a short time and if the body is found within a short distance. However, in this particular case, the deceased and the present applicant having been seen together is not an usual circumstance because both of them, as well as, others were invited by this witness Suraj Shirke for dinner. All of them had left together, therefore, this circumstance by itself may not be incriminating in the facts of this case.

7. The other circumstance of alleged Extra Judicial Confession made to mother of the applicant makes interesting reading. The statement is recorded on 22/01/2019. In her statement she has narrated that the applicant had told her that the other accused had committed murder of the deceased, but he categorically told her that he had not even touched the deceased and he had run away from there. Thus, this cannot be termed as confession. He has not ascribed any role to himself in connection with the murder. It is entirely exculpatory in nature. Therefore, it is not an incriminating circumstance.

8. The third circumstance of recovery of clothes at his instance will have to be discarded, as well, because the C.A. report does not show that the blood found on the clothes was that of the deceased. The C.A. report is inconclusive in that behalf. Another circumstance of recovery of motorcycle at his stance is also not incriminating because, admittedly, applicant had gone to attend the wedding ceremony and dinner on his motorcycle. Thus, considering all these aspects, the evidence against the present

applicant is very weak. Though, ultimately the effect of this evidence will have to be decided during the trial, at this stage, I am inclined to grant bail to the present applicant.

9. Hence, the following order :

ORDER

- (i) In connection with C.R. No.I 17 of 2019 registered with Rajgad 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.)