

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 2116 OF 2019

Jamshed Mo. Akbar Shaikh

...Applicant

Versus

The State Of Maharashtra

...Respondent

....

Mr. Priyal G. Sarda, Advocate for the Applicant.

Smt. A.A. Takalkar, APP, for the Respondent-State.

Mr.Pawar, PC, Indapur Police Station is present in Court.

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CORAM : SARANG V. KOTWAL, J.

DATE : 20th SEPTEMBER, 2019

P.C.

1. The applicant is seeking his release on bail in connection with C.R. No.243/2018 registered with Indapur Police Station, District – Pune under Section 302 read with 34 of I.P.C.

2. The applicant is arrested on 8.4.2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed. FIR is lodged on 5.4.2018 by one Parshuram Waghmare, who was brother of the deceased Ramchandra Waghmare. He has stated in his FIR that on 4.4.2018 he had seen the deceased travelling on a motorcycle with accused No.1 Hanumant Raut and one unknown person. After that he had not

seen his brother. On the next day, the Police informed him that a dead body was lying on Ramkund Road at Pandharwadi. The informant went there and saw that it was a dead body of his brother Ramchandra. On that basis, the FIR was lodged. In the FIR, suspicion was expressed against Hanumant Raut, who had taken the deceased with him on the previous day. Suspicion was also mentioned against that unknown person who was with them and one lady with whom the deceased had some relations.

3. The investigation was carried out and the charge-sheet was filed. The charge-sheet shows that a Test Identification Parade was held on 19.4.2018, which merely shows that the informant had identified the applicant. It does not give any further details in what context the applicant was identified.

4. Besides this, there is a statement of one Raja Mane, who had seen the deceased going on a motorcycle at around 8:20 p.m. on 4.4.2018 with accused No.1 Hanumant Raut and the present applicant. Besides this, there is a panchnama of recovery of blood stained clothes allegedly worn by the applicant. However, that recovery is effected pursuant to the statement made by his co-

accused Hanumant Raut. The post-mortem report shows that the deceased had died because of the head injuries coupled with face injuries coupled with hemorrhagic shock. The deceased has suffered five injuries and there was fracture of skull.

5. I have heard Shri Sarda, learned Counsel for the applicant and Smt. Takalkar, learned A.P.P. for the State. Learned Counsel for the applicant submitted that the only piece of evidence against the present applicant is the circumstance of having been seen together with the deceased on earlier day. He submitted that there was a considerable time gap from the time when he was seen with the deceased and when the dead body was found. The exact time of death is not clear. He, therefore, submitted that this is the only circumstance and it is not sufficient to base the applicant's conviction. He relied on the judgment of the Hon'ble Supreme Court in the case of **Kanhaiya Lal Vs. State of Rajasthan**¹, wherein it is observed that the circumstance of last seen together does not by itself necessarily lead to inference that it was the accused who had committed the crime.

6. Learned APP opposed this application and pointed out

¹ (2014) 4 SCC 715

that the informant had identified the applicant in T.I. parade as the unknown person who was with the deceased on the previous evening. She also emphasized on the statement of other eye witness Raja Mane, who had seen both accused with the deceased at 8:20 p.m. on the previous day. She submitted that no explanation is offered by the applicant.

7. I have considered all these submissions. The recovery of clothes allegedly worn by the accused, including the applicant, cannot be a circumstance against the present applicant because the recovery was effected at the instance of the co-accused.

8. There is considerable force in the submission of Shri Sarda that the T.I. Parade does not take the prosecution case any further because there is no further statement showing in what context the informant had identified the applicant.

9. At best, there is only a circumstance of last seen together by Raja Mane, but, as held in many judgments of Hon'ble Supreme Court, the prosecution has to establish that the time gap between the deceased being seen with the accused and the time of death was very small to make it an incriminating circumstance. In

the present case, considering all these weak pieces of evidence the applicant has made out a case for his release on bail. Hence, the following order :

ORDER

- i. The applicant is directed to be released on bail in connection with C.R. No.243/2018 registered with Indapur Police Station, District – Pune, on his furnishing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- ii. The application is disposed of accordingly.

(SARANG V. KOTWAL, J.)