

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

BAIL APPLICATION NO. 1997 OF 2018

Suryaprakash Ashokkumar Chauhan
@ Babalu

... Applicant.
(Org.Accused no.3)

V/s.

The State of Maharashtra

... Respondent.

Mr. P. A. Pol, Advocate a/w. Sharad Suryawanshi for the
Applicant.

Mr. S. R. Agarkar, APP for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : FEBRUARY 18, 2019.

PC :

1 The Applicant is seeking bail in connection with the CR No. 365 of 2017 dated 23.09.2017, registered with Shivaji Nagar Police Station, Dist. Mumbai for the offence under sections 302, 392, 449, 176 & 411 read with section 34 of the Indian Penal Code.

2 The Applicant was arrested on 25.09.2017. First information report was lodged against the unknown person on 23.09.2017. The complainant was conducting rationing shop on 23.09.2017. The complainant received information from the applicant while he had visited the shop at

Baiganwadi that the shutter of the shop was closed and wife of complainant, on opening the shutter, was found lying in the pool of blood. The complainant had visited the place of incident. It was noticed that gold ornaments and cash amounting to Rs. 3,41,000/- was missing from the said premises. The FIR was lodged and investigation commenced. The statements of the witnesses were recorded and on completion of investigation, chargesheet is filed. The applicant preferred application for bail before the Sessions Court, which was rejected.

3 As far as the present applicant is concerned, the prosecution is relying on the memorandum of statement of Shikukumar Ashokkumar Chouhan, who has stated that the Applicant had handed over the amount to him and out of that amount Rs. 13,000/- were produced by him. The prosecution also relied on the statement of witness -Rizwan Khan, who has stated that on 27.09.2017, the applicant was found in a disturbed state of mind and therefore, it was suspected that the applicant must be involved in the case of murder of the deceased. In the present case, the statement of witness - Santosh Gupta was recorded on 29.09.2017. The said witness stated that on 23.09.2017 he had seen two persons namely Majorsingh and Ashokkumar Gupta coming out from the shop premises with a bag and at that time, the accused Majorsingh was carrying the bag in his hand. Thereafter, the applicant

was seen entering into the shop and coming out of the shop. The said statement indicates that the alleged incident had occurred prior to the applicant visited at the shop. The case of the prosecution, however, is that the applicant is also one of the conspirator in the commission of the crime. The co-accused - Rahul Khemchand Singh had preferred an application before this court, which was allowed by this court (Coram : A.S. Gadkari,J.) by order dated 25.07.2018. Learned counsel for the applicant submits that there is no evidence against the applicant, showing his involvement in the crime. There is no recovery at the instance of the applicant. He is in custody from the date of his arrest.

4 Learned APP submitted that the statements of the witnesses do show complicity of the applicant in the crime. The applicant is the person, who had disclosed to the complainant about victim lying in the pool of blood in the shop premises. The evidence of the witnesses indicate that the applicant was present in the crime of vicinity in the suspicious circumstances.

5 Perused order dated 25.07.2018 passed by this court in Bail Application No.392 of 2018, granting bail to co-accused - Rahul K. Singh. The prosecution had relied upon the circumstances against the said co-accused that he was seen entering into the shop. There is recovery of the finger ring

and cash of Rs. 5,500/- from him. It was observed that the statements of the said witnesses were recorded belatedly. The same were recorded after the arrest of the said accused.

6 As far as the present applicant is concerned, the circumstances, as stated above, depicted suspicion against the applicant. The prosecution relied upon the recovery of cash from the brother of the applicant. However, as noted above, the co-accused from whom there was recovery of the alleged gold ring and cash, has been granted bail. The statements of the witnesses, as stated above, which are used against the applicant, are recorded after arrest of the applicant. There is no evidence to show that applicant is involved in murder of victim.

7 In these circumstances, the Applicant can be granted bail. Hence, I pass following order :

ORDER

- i. Bail Application is allowed.
- ii. The Applicant is directed to be released on bail in connection with the CR No. 365 of 2017, registered with Shivaji Nagar Police Station, Dist. Mumbai, on his furnishing

PR Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

iii. The Applicant shall report to concerned Police Station once in a month, on first Saturday of the month between 11 a.m. to 1 p.m. till further orders.

iv. Application is disposed of.

(PRAKASH D. NAIK, J.)

.....