

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

BAIL APPLICATION NO.2233 OF 2019

Rohit Sanjay Gaikwad Applicant

versus

The State of Maharashtra Respondent

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- Mr. Nitesh Mohite I/b. Sunil S. Kamble, Advocate for Applicant.
- Mr. S. H. Yadav, APP for the State/Respondent.
- Mr. A. S. Kanade, PN 1348, Shirala Police Station, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 22nd AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.127/2018 registered with Shirala Police Station, District Sangli, under Sections 302, 201, 120-B r/w. 34 of IPC.

2. The offence is registered in respect of death of one Shivaji Jadhav. Initially, an accidental death report was registered on 17/9/2018, after his dead body was discovered from the river bed. He had suffered injuries on his head and other body parts. The

post mortem notes show that the death was caused due to head injury on fronto-parietal bones coupled with intracerebral haemorrhage. He had suffered six injuries on head and face.

3. The ADR was lodged on the basis of statement given by Shankar Jadhav who is cousin of deceased Shivaji. He has stated in his ADR that one Vikas Shingte had informed Shankar that the deceased was lying dead in Purna River near the bridge. At that time, Shankar had not expressed any suspicion against anyone. On 21/9/2018, the FIR was lodged at his instance vide C.R. No.127/2018 at Shirala Police Station. In his FIR, he has stated that the deceased had left his house at around 8.30 p.m. on 16/9/2018 and had not returned. Subsequently, as mentioned earlier Shankar was informed by Vikas Shingte that deceased was lying dead in the river. His body was recovered. It is mentioned in the FIR that the deceased was having enmity with one Mahadev Sakpal because Mahadev was suspecting that the deceased was having illicit relationship with Mahadev's wife. During inquiry, police came to know that the present applicant, Ganesh Yadav,

Gausul Azam, Abhijit Kamble and Rohit Gaikwad committed this offence. It is the prosecution case that Mahadav had hired one Gausul Azam and others to commit his murder for which he had paid Rs.1,20,000/- and had paid further amount of Rs.60,000/-. On this basis, the FIR was lodged.

4. The investigation was carried out and the applicant was arrested on 21/9/2018. The investigation is over and the chargesheet is filed.

5. The prosecution case is that, on 16/9/2018, the accused called deceased Shivaji for consuming liquor and for having dinner. He was taken to house of one Vidyadhar Kulkarni. He was made to consume liquor and after he had gone to sleep, all the accused smothered him with a pillow. He was taken to a bridge on Purna river and was thrown in the river. Co-accused Abhijit and Ganesh threw a big stone causing injury to the deceased. His motorcycle was thrown from the bridge in the river purportedly trying to make it appear as an accident. There are no eye

witnesses to the incident. The case is based purely on circumstantial evidence.

6. Heard Mr. Nitesh Mohite, Ld. Counsel for the Applicant and Mr. S. H. Yadav, Ld. APP for the State.

7. Mr. Mohite submitted that in the entire chargesheet there is no incriminating material against the present applicant connecting him with murder. The applicant had no motive to commit murder of the deceased. The only remote connection of this present applicant with the alleged murder was the theory of last seen together with the deceased and some call detail records showing conversation with other accused. Ld. Counsel relied on a common order passed by this Court on 1/8/2019 in BA No.501/2019 and B.A.No. 1008/2019 wherein bail was granted to Abhijeet Kamble and Ganesh Yadav. Shri. Mohite claimed parity with these accused for release of the applicant on bail.

8. As against these submission, Ld. APP submitted that those

two circumstances are sufficient to bring home guilt of the accused. The offence is serious and the applicant does not deserve to be released on bail.

9. I have considered these submission. In the entire chargesheet there are only two circumstances against the present applicant. The first circumstance is concerning the theory of 'last seen together with the deceased'. However, this circumstance is not incriminating against the applicant, because there is no witness who had seen the applicant in company of the deceased soon before the incident. There is a statement of one Ayan Luis who was Manager of Chinar Bar. The deceased had come to his bar at 9.15 p.m. on 16/9/2018 with the co-accused Gausul Azam. Thereafter, both of them had purchased liquor bottles and a water bottle. At 9.45 p.m. one other person came to his bar. According to the prosecution case, he was accused Abhijit Kamble. However, Abhijit Kamble had come and left subsequently. The deceased was not seen in the company of Abhishek Kamble. There was panchanama of CCTV footage relied on by the prosecution. This

panchanama shows that Abhishek Kamble had come to that liquor shop with the applicant. The aforesaid witness Ayan Luis had not seen this applicant in his shop. In any case, the CCTV footage only shows that the applicant had accompanied Abhishek Kamble but he was not seen in the company of deceased. Therefore, the prosecution cannot claim that it is a theory of 'last seen together' because the applicant was not seen in the company of deceased.

10. The next circumstance is about the CDR collected during investigation. This record at the most shows that there was conversation between the applicant and the other accused. However, that by itself, does not connect him with the murder of the deceased. The release of the accused Abhishek Kamble and Ganesh Yadav on bail is also a relevant circumstance. The ground of parity based on these orders in respect of co-accused is also available to the present applicant. Considering all these aspects, the applicant has made out a case for his release on bail. Hence, the following order is passed.

ORDER

(i) The applicant is directed to be released on bail in connection with C.R. No. 127/2018 registered with Shirala Police Station, District Sangli 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.

(ii) The application is disposed of.

(SARANG V. KOTWAL, J.)