

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

CRIMINAL BAIL APPLICATION NO. 2862 OF 2019

Mr. Ganesh Dinkar Ginge

.... Applicant

Versus

The State of Maharashtra

.... Respondent

- Ms. Subhangi Parulekar for the Applicant
- Ms. A.A. Takalkar, APP for the State/Respondent
- Mr. Paras D. Yadav for Intervenor/First Informant.

**CORAM : SARANG V. KOTWAL, J.
DATE : 16th OCTOBER, 2019.**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.107 of 2017 registered with Wadgaon Mawal Police Station, Pune under Section 302, 201 r/w. 34 of The Indian Penal Code.

2. The prosecution case, in short, is that the deceased Hiranman Bhilare was having dispute over way to the land of accused No.1 Madan Waringe. The applicant/accused No.2 was relative of Madan and accused No.3 Kiran was their friend. It is the case of the prosecution that the applicant was instrumental in Madan Waringe purchasing that piece of land. The applicant's wife was one of the

co-owners of that piece of land which was sold to Madan Waringe. The accused Madan was unable to access it. Therefore, there was enmity between Madan and the deceased. The applicant was instrumental with Madan in purchasing the said land. Therefore, he was taking side of Madan. It is the case of the prosecution that all the accused i.e. the applicant, accused No.1 Madan and accused No.3 Kiran confronted the deceased on 1st July, 2017 at about 11.45 p.m. in a secluded spot and thereafter all of them assaulted him with deadly weapons and committed his murder. The post-mortem notes shows there were 17 injuries and cause of death was head injury.

3. The applicant was arrested on 4th July, 2017 and since then he is in custody. The investigation is over and the charge-sheet is filed.

4. I have heard Ms. Subhangi Parulekar, learned counsel for the applicant and Mrs. A.A. Takalkar, APP for the State.

5. The learned counsel for the applicant submitted that, it is a case of circumstantial evidence and there are no eye witnesses. The circumstances alleged against the accused relate to the assault caused because of Madan Waringe's dispute with the deceased.

There is recovery of sickle and axe at the instance of present applicant, but the C.A. report does not show connection of these weapons with the crime. Besides, only circumstances against the present applicant, are extra-judicial confessions given by the accused Kiran to witnesses Krishna and Prashant. The learned counsel for the applicant submitted that both these statements mentioning extra-judicial confessions appear to be given by the witnesses under pressure of police, therefore, they are not reliable.

6. Against this, the learned A.P.P. as well as, learned counsel for the intervenor submitted that there is no reason to disbelieve extra-judicial confessions. They submitted that extra-judicial confessions are admissible pieces of evidence, therefore, his guilt can be based on these confessions.

7. I have considered all these submissions. The weapons, as mentioned, were recovered at the instance of applicant on 6th July, 2017. They were sickle and axe, and were recovered from road side bushes. The place was accessible to all. Importantly, the C.A. report reveals that there was no blood on the axe and blood group of the blood found on Koyata was inconclusive. Therefore, that piece of evidence is not incriminating against the applicant.

8. As far as extra-judicial confessions are concerned, there are statement of Krishna Dabhade and Prashant Salve. Krishna has stated that on 2nd July, 2017 at 2.00 p.m. Kiran Kank met them. Clothes of Kiran were full of mud and his face was swollen. He was limping because of thorns in his feet. On being asked, he informed that Madan Waringe, Kiran Kank, and he himself committed murder of one person. After that applicant and Ganesh came there carrying two plastic bags. The accused went to Prashant's house. Kiran directed Prashant to burn those clothes. Thereafter Krishna and Prashant left all the accused at Kanhe Railway station. After that the officers of Maval Police Station took both these witnesses Krishna Dabhade and Prashant Salve in custody. Thereafter their statements were recorded.

9. The statement of Prashant Salve is exactly on similar line and his statement was recorded on 20th July, 2017, after about more than 15 days of arrest of the accused. Learned counsel for the applicant rightly submitted that those statements were recorded when they were in custody of police, therefore, their voluntariness is extremely doubtful and their evidenciary value is extremely weak. Learned counsel for the applicant relied upon the observations made by this Court in Criminal Application No.1095 of 2019 decided on 29th

August, 2019 in the case of co-accused Kiran, in which those extra-judicial confessions were observed to be weak piece of evidence.

10. Apart from merits of the case, learned counsel for the applicant invited my attention to the medical papers of Sassoon Hospital in respect of condition of the applicant. Papers show that he is suffering from 'cancer' and his condition is deteriorating day by day. Considering all these aspects, no purpose will be served by keeping the applicant in custody till conclusion of the trial. Hence, I am inclined to grant bail to the applicant. Hence, the following order -

ORDER

i) In connection with C.R. No.107 of 2017, registered with Wadgaon Mawal Police Station, Pune, the applicant is directed to be released on bail on his execution of P.R. bond of Rs.25,000/- (Twenty Five Thousand only) with one or two sureties in the like amount.

ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)