

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

BAIL APPLICATION NO. 3374 OF 2018

Mr.Ashok Mohan Gunge

...Applicant.

Vs.

State of Maharashtra

...Respondent.

Ms.Shubhangi Parulekar for Applicant.

Mr. S.H. Yadav, APP for the Respondent/State.

Mr.P.R. Shikalgar, API, Samarth Police Station, Pune.

CORAM : P.N. DESHMUKH, J.

DATE : 15TH MARCH, 2019

PC :

1. This application is by applicant-accused involved in CR No.153 of 2016 registered under Section- 302 and 201 read with 34 of Indian Penal Code by Samarth Police Station, Pune.

2. Learned counsel for applicant submitted that prosecution's case is based on circumstantial evidence and except for one statement of Sushil on the theory of last seen together there is no other evidence establishing involvement of applicant in the present crime. It is contended that even

according to witness Sushil applicant was in the company of deceased on 20.8.2016 and was found dead two days thereafter. It is also contended that as per statement of Sushil even co-accused Kumar, was stated to be with deceased who is released on bail by this court by order dated 8.1.2019 in BA No. No.2874/2018. The applicant therefore prays that application be allowed on parity and even on merits as even from statement of Sushil as above, no case based on theory of last seen can be established.

3. Learned APP. opposed the application on the ground that there are criminal antecedents against applicant.

4. Complainant Mangesh Pote brother of deceased lodged report on 22.8.23016 after dead body of deceased was found at Nana Peth Pune. Report was against unknown person. Upon such information offence came to be registered.

5. Admittedly except statement of Sushil as above, there is no other evidence at all. So also apart from applicant, name of Kumar is also mentioned by Sushil in his statement stating that applicant, Kumar and deceased were together in the night of 20.8.2016. Admittedly Kumar is released on bail by this court. Even otherwise case of prosecution is based

on last seen theory which cannot be accepted as according to its case deceased was seen in the company of applicant two days prior to his death. In view of above aspect of the case and as applicant is in custody since 23.8.2016 and nothing incriminating is seized at his instance, application is allowed as per order below.

ORDER

- a) Applicant shall be released on bail in CR No.153 of 2016 registered under Section- 302 and 201 read with 34 of Indian Penal Code by Samarth Police Station, Pune on his executing PR bond of Rs.50,000/- with one surety in the like amount.
- c) While on bail the applicant shall mark his presence with Investigating Officer on 1st day of alternate month pending trial.
- d) The applicant shall not tamper with evidence in any manner.
- e) Needless to state that applicant shall appear before trial court on fixed dates of hearing, without fail.

(P.N. DESHMUKH, J.)