

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

24 BAIL APPLICATION NO.1088 OF 2020

KRUSHNA @ GANESH HIMATRAO GAVHANE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Chapalgaonkar S. G.
APP for Respondent : Mrs. D. S. Jape

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CORAM : V.K. JADHAV, J.
Dated : October 15, 2020

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PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.73 of 2020 registered with Pahur Police Station, District Jalgaon for the offences punishable under sections 302, 201 r/w 34 of the Indian Penal Code. His application with similar prayer bearing IA No.1/2020 below Exh. 9 in S.C. No. 94 of 2020 came to be rejected by the learned Additional Sessions Judge, vide order dated 08.09.2020.

2. Learned counsel for the applicant submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that motive is

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also weak and it hardly provides any reason for this applicant to commit murder of deceased Jibrael. Learned counsel submits that the informant Ismile has no first hand information about the incident and on the basis of the disclosure made by co-accused Gajanan Tayade the informant went towards the alleged spot of incident and found the dead body. Learned counsel submits that on these set of allegations, co-accused Gajanan Tayade has been released on bail by the Sessions Court. Learned counsel submits that except recovery of a shirt with one missing button, there is no further connecting evidence against the applicant. Learned counsel submits that the said shirt shown to have been recovered at the instance of the applicant with a missing button since one button was found near the spot. Learned counsel submits that there is no further connecting evidence about comparison or matching of the said button found on the spot with the remaining buttons of the shirt seized at the instance of the applicant. Learned counsel submits that even assuming that there is evidence about last seen

together, however, it is a weak type of evidence and there is a considerable gap between the deceased lastly seen in the company of the applicant and the dead body found at a subsequent date. There is no evidence as to what happened between the said period. Learned counsel submits that the applicant has a fixed place of residence, available for trial. The applicant is ready to furnish the surety. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that *prima facie* there is evidence about last seen together. Learned APP submits that deceased was lastly seen alive in the company of the applicant and co-accused persons. Informant has reported that on 30.3.2020 deceased Jibrael went alongwith the applicant and co-accused persons and though informant had repeatedly asked whereabouts of the deceased, they had not given correct information to the informant. Learned APP submits that on the basis of certain statement made by co-accused Gajanan before

the informant, it transpired that on the date of incident a quarrel had taken place between Jibrael and the present applicant and in consequence thereof, deceased Jibrael was murdered. Learned APP submits that during the course of investigation, at the instance of the present applicant, one pink colour shirt of the applicant came to be seized at his instance by drawing a panchanama under section 27 of the Evidence Act and one button of the shirt was found missing. Learned APP submits that said button was found near the dead body. Furthermore, there is evidence that deceased Jibrael alongwith these persons had been to one person, namely, Sultan, for purchasing liquor and said Sultan had identified the applicant and other accused persons. Learned APP submits that *prima facie* there is strong case against the applicant. Application may be rejected.

4. On going through the allegations made in the complaint and on perusal of the charge-sheet, I find that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence

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in this case. Even assuming that deceased was lastly seen alive in the company of the applicant on 30.3.2020, however, dead body of Jibrael was found in hilly area on 1.4.2020. Though, the informant has stated much in the complaint about the spot of the incident disclosed to him by co-accused Gajanan Tayade, however, said co-accused Gajanan came to be released on bail by the Sessions court. Co-accused Gajanan had disclosed to the informant that there was a quarrel between deceased Jibrael and applicant on trifling reasons. However, said statement of the co-accused is not admissible. Even if it is considered that the dead body was found at the spot of the incident, shown by co-accused Gajanan, however, as discussed above, dead body was found in the hilly area and postmortem report does not indicate any mark of violence. As per the injuries mentioned in column no.17, there is only one injury on occipital area at skull. It is not clear as to whether the said injury was occurred because of a smash given by any weapon or whether it was an accidental injuries. Though there is recovery of

one shirt with one missing button at the instance of the applicant, however, there is no further connecting evidence to indicate that the button found on the spot near the dead body matches to the remaining buttons of the shirt seized at the instance of the applicant. Though, deceased was lastly seen alive in the company of the applicant and co-accused on 30.3.2020, however, the dead body was found on 1.4.2020 and there is no evidence as to what happened in between the said period. So far as this circumstance of last seen together is concerned, two co-accused persons came to be released on bail. Learned APP, at this stage, has pointed out that there is one crime registered against the applicant in the year 2019 for the offence punishable u/s 352, 354 of IPC. However, considering the offence alleged to have been committed by the applicant in the year 2019 pertaining to section 354, I hardly find any relevance of the said crime with this crime. Thus, considering the entire aspect of the case, and since *prima facie*, at many places, the chain of circumstantial

evidence is found missing, I am inclined to release the applicant on bail. Hence, following order.

O R D E R

- I. Application is hereby allowed.
- II. Applicant KRUSHNA @ GANESH HIMATRAO GAVHANE in connection with Crime No. 73 of 2020 registered with Pahur Police Station, District Jalgaon for the offences punishable under sections 302, 201 r/w 34 of the Indian Penal Code, be released on bail on furnishing P.B. of Rs.20,000/-(Rs.Twenty Thousand) with one solvent surety of the like amount, on the following conditions :-
 - a] The applicant shall not tamper with the prosecution evidence, in any manner.
- III. Bail application is accordingly disposed off.

(V.K. JADHAV, J.)

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