

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

BAIL APPLICATION NO.2365 OF 2019

Jitendra Amarchand Tak	.. Applicant
Vs.	
State of Maharashtra	.. Respondent

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Mr.Rahul S. Arote, Advocate for the Applicant.

Ms.Veera Shinde, APP for Respondent – State.

Pravin Subhash Mhaske, Police Constable Khed Police Station,
District – Ratnagiri, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 21, 2020.

P.C.:

This is an application for bail in connection with C.R.No.14 of 2016, registered with Khed Police Station, Ratnagiri, for the offence punishable under Section 302 of Indian Penal Code (“IPC”, for short). Applicant was arrested on 1st February, 2016.

2 First Information Report (“FIR”, for short) was lodged on 30th January, 2016 by Rajaram Tukaram Gawade. He is son of the deceased. According to him, on 29th January, 2016. While returning home from duty he was informed by his mother that his father had not returned home. The complainant tried to search

his father. At about 09:30 p.m., his father was found in injured condition near Baildev dam. He had sustained injuries on his neck by sharp weapon. He was dead. He realized that some unknown person have killed his father. FIR was registered. Supplementary statement of the complainant was recorded on 24th February, 2016. In the said statement, he had stated that while searching for evidence near the place where body of deceased was found, one axe having blood stains was found at a distance of 200 feet. It was seized. It was belonging to deceased. Rakesh Hambir informed police that on 29th January, 2016, while he was driving rickshaw, one white coloured Tata Magic vehicle passed with speed. He had seen driver and another person in vehicle and he can identify them. Bhagoji Favare informed that on 29th January, 2016, Rajaram Gawde (deceased) was breaking wood by axe near Baildev canal. He saw three persons near the said place in drunken condition and they were quarreling. White car was also parked at the said place. The driver of vehicle was brought to police station. Rakesh Hambir identified him. He gave his name as Umesh Utekar. He confessed that he has committed the offence along with Jitu Tak and Sandesh Chavan. One of them also confessed that the deceased had confronted them hence he was pushed and assaulted by axe which was with deceased.

3 It is submitted that there is no eye witness to the incident and the case is based on circumstantial evidence. There is no strong circumstance to show the involvement of the applicant except the fact that he was seen near the place of incident. There is no other corroborative evidence against him. He is in custody for four years and nine months. There are no criminal antecedents against applicant.

4 Learned APP submitted that the trial has commenced. Prosecution has so far examined two witnesses. The applicant has been identified by two persons, namely, Bhagoji Favare and Rakesh Hambir. The offence is serious.

5 Undisputedly, the case is based on circumstantial evidence. There is no eye witness to the incident. There is no recovery at the instance of the applicant. There are no criminal antecedents against him. The only circumstance which is relied upon by the prosecution against the applicant is that two witnesses referred to hereinabove had seen the applicant along with others near the place where the deceased was cutting wood. Statement of Bhagoji Favre was recorded on 30th January, 2016.

He stated that deceased was cutting wood and at nearby place. Accused were quarreling with each other. They were drunk. Statement of Rakesh Hambir was recorded on 30th January, 2016. He saw white Tata vehicle passing through in speed from Kalambani Gavadevadi. Driver and one person were sitting in vehicle. He went to police station. Driver of vehicle was brought by police. He identified him. Driver gave his name as Umesh Utekar. He confessed that he committed crime with Jitu Tak and Sandesh Chavan. Supplementary statement of Rakesh Hambir was recorded on 24th February, 2016. He stated that he identified Umesh Utekar and applicant in identification parade conducted on 24th February, 2016. Bhagoji Favre also identified applicant in the parade. The identification would at the most establish that applicant was present at the spot where he was seen with co-accused. However, that would not be sufficient to infer that he is involved in murder. There is no other evidence to substantiate the involvement of the applicant in the crime. Although, the trial has began with examination of two witnesses, it would be relevant to note that the applicant is in custody from four years and nine months. Considering the nature of evidence, the applicant can be granted bail on certain terms and conditions.

:: ORDER ::

- (i) Bail Application No.2365 of 2019, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R.No.14 of 2016, registered with Khed Police Station, Ratnagiri, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant shall report concerned police station once in a months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) Applicant shall regularly attend the trial Court on every date of hearing, unless exempted by the Court;
- (v) Bail Application No.2365 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)