

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

CRIMINAL BAIL APPLICATION NO.841 OF 2019

Mahesh Hanmant Teware	..Applicant
Vs	
State of Maharashtra	..Respondent

**WITH
CRIMINAL APPLICATION NO.1194 OF 2019
(For Intervention)
IN
CRIMINAL BAIL APPLICATION NO.841 OF 2019**

Amol Mohan Virkar	..Applicant
-------------------	-------------

In the Matter of

Mahesh Hanmant Teware	..Applicant
Vs	
State of Maharashtra	..Respondent

Mr. Ashok Mundargi a/w Mr. Tejas Hilage, for the Applicant
in BA 841 of 2019.

Mr. Satyavrat Joshi, for the Applicant in Cri.Appl. No.1194 of
2019.

Mr. Arfan Sait, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

**DATE : 05th OCTOBER 2020
(Through Video Conference)**

P.C.

1. The applicant(accused No.2), alongwith the co-
accused is facing prosecution for the offence punishable

under sections 302, 201 r/w 34 of Indian Penal Code, for having intentionally caused death of Amit Virkar.

2. The prosecution case as disclosed from the complaint of Amol Virkar and Statement of witnesses is that deceased Amit Virkar was having a cloth shop. The applicant and the co-accused Rahul Teware and the deceased were friends. It is stated that the accused Rahul Teware had purchased clothes worth Rs. 18,000 and the present applicant had also purchased clothes worth Rs.8,000/- from the shop of Amit Virkar on credit and the applicant and co-accused had failed to pay the amount of the purchase price.

3. About a month before 20th March 2018, the deceased is alleged to have taken away the motorcycle, belonging to the father of the co-accused Rahul Teware. However, subsequently, it was returned. This appears to be the background, in which the incident in question is alleged to have happened.

4. On 19th March 2018 at about 1.00 p.m., the deceased left his house in order to meet the present applicant and the co-accused Rahul Teware. However, he did not return and this was informed by wife of the deceased to the complainant Amol Virkar. It is stated that at about 7.30 p.m. wife of the deceased had called him on his mobile when she had a word with deceased as well as the applicant and the co-accused Rahul Teware. However, subsequently, the mobile of the deceased went unanswered. The complainant Amol Virkar lodged complaint on 20th March 2018, on the basis of which the offence came to be registered with Police Station Islampur.

5. Complainant Amol Virkar has reported that when they were looking for the deceased, at 8.00 a.m., on 20th March 2018, one Sanjay Virkar who is cousin brother of complainant, informed him that a day before at about 6.00 p.m. the deceased was found standing with the applicant as well as the co-accused near Panchali Bar. Unfortunately during the search of the deceased, he was found lying on the terrace of Om Sai Spray and Painting Body Garage, which is run by the present applicant. Incidentally the said

Garage is obtained on lease in the name of the mother of the applicant. It was reported that the deceased was found lying dead, and there was ligature mark on his neck and a broken beer bottle was lying near by.

6. During the course of the investigation, Investigating Officer has recorded statements of several witnesses and after completion of the investigation charge-sheet is filed.

7. The learned Sessions Judge by an order dated 9th October 2018, has refused to release the applicant on bail.

8. I have heard Mr. Mundargi, the learned Senior Counsel for the applicant and Mr. Sait, the learned Additional Public Prosecutor. I have also heard Mr. Joshi the learned Counsel appearing for the intervener. Perused record.

9. The learned Senior Counsel for the applicant has submitted that the case is based on circumstantial evidence. It is submitted that the circumstance of last

seen together, as well as the applicant and co-accused having being found in the company of the deceased in the evening of 19th March 2018 as well as the circumstance of the accused having changed their clothes in the ready-made store are not sufficiently established. In any event, these circumstances are not of a definitive character. The learned Counsel has taken me through the statement of Sanjay Virkar and others including Mr. Shankar Patil, in order to submit that their statements do not bring out any circumstance much less of an incriminatory nature, against the applicant. In particular, with reference to the statement of Mr. Shankar Patil, it is submitted that from his statement it appears that the applicants had invited Mr. Shankar Patil and were insisting him to join them for dinner in the evening on 19th March 2018. In the submissions of learned Counsel for the applicant, it was unlikely for the applicants to have insisted or invited Shankar Patil to join them, had they any intention to commit murder of Amit Virkar.

10. In so far as the finger print of the applicant, found on the broken beer bottle is concerned, it is

submitted that the post mortem report of the deceased shows that he has died of asphyxia due to strangulation, which is referable to the injury no. 1 namely a ligature mark around the neck and is not attributable to any injury arising out of the alleged use of the beer bottle. He submitted that investigation is complete and the applicant is in custody from 20th March 2018 and their further custody pending the trial is not necessary.

11. The learned Additional Public Prosecutor and the learned Counsel for the Intervener has submitted that the post mortem report also shows a CLW on the occipital region of the scalp which is possible due to the hitting of the beer bottle. It is submitted that there is strong circumstantial evidence including the circumstance of last seen together. The applicants have changed clothes in a ready-made shop and the finger print of the applicant is found on the beer bottle, recovered from the spot. The learned APP has referred to the injury certificate of the applicant in order to point out that the applicant had sustained a wound on the right little finger. He has also referred to the statement of Sachin Dhokale and extra

judicial confession to one Sandeep Mane who incidentally happens to be a police constable attached to P.S. Sangli Gramin. The learned APP pointed out that Sandeep Mane is a friend of the applicants and the deceased and therefore the said confessional statement was not made to Sandeep Mane in the capacity as a police constable and therefore the said confessional statement would be admissible. He, therefore, submitted that the application be dismissed.

12. I have considered the circumstances and submissions made. Prima facie it appears that Om Sai Spray and Painting Body Garage is taken on lease by the mother of the present applicant i.e. Sharada Teware in September 2017 and it was run by the present applicant. The deceased was found dead on the terrace of the said garage. There are statements of several witnesses including Sanjay Virkar and others which would show that the deceased was shown in the company of the applicant in the evening of 19th March 2018 and the following morning he was found dead. There is also a statement of Sachin Dhokale who is a friend of the present applicant and

the deceased, who states that since about 2.30 p.m. on 19th March 2018 the applicant and the deceased were together. Prima facie the statement of Vikram Mohite, would show that on 19th March 2018 at about 2.00 p.m. they were together and had purchased a beer and a whisky from one Blue Heaven Wine Shop.

13. Prima facie at this stage, report of the handwriting/ finger print expert, shows the finger prints of the applicant on the beer bottle recovered from the spot. Apart from this, there is also a statement allegedly made to one Sandeep Mane who is a friend of the applicant as well as the deceased and who is incidentally a police constable attached to the police station Sangli, Gramin, which would show that there is a extra judicial confession made by the applicant. It is true that said confession made by the applicant is before a police officer. However, it appears that Sandeep Mane was attached to P.S. Sangli, Gramin, while the present offence was registered and investigated by P.S. Islampur and Sandeep Mane was not concerned with the investigation of the present offence. It is neither necessary nor appropriate to record any final opinion as to

the admissibility of said statement made to Sandeep Mane. This will essentially be required to be gone into at the trial.

14. Considering the over all circumstances, I find that this is a case where there is a strong circumstantial evidence to show complicity of the applicant in the alleged offence.

15. In the result the Criminal Application is dismissed. It is made clear that the observations here in are essentially of a prima facie nature, for the limited purpose of deciding the plea for bail. The learned Sessions Judge shall not be influenced by the same at the trial.

C.V. BHADANG, J.