

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.293 OF 2020

Hanumant Dashrat Raut .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Priyal G. Sarda for the Applicant.

Mr. S.V. Gavand, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 10TH DECEMBER, 2020.

P.C:-

1. Charge-sheeted in C.R. No.243 of 2018 for the offences punishable under Section 302 read with Section 34 of the IPC, the Applicant seeks his release on bail.

2. Mr. Sarda, learned counsel for the Applicant claims parity with co-accused Jamshed A. Shaikh, who has been released on bail by this Court (Mr. Justice Sarang V. Kotwal) in Criminal Bail Application No.2116 of 2019 on 20/09/2019. Learned A.P.P., however, invites my attention to the distinguishing factor and submits that the Applicant is not entitled to claim parity.

AJN

3. The case of the prosecution is based on circumstantial evidence. On 05/04/2018, Parshuram Waghmare, brother of the deceased Ramchandra reported to Indapur Police Station that on 04/04/2018, his brother had left home on his motorcycle at 9.30 a.m. From afternoon till 8.00 p.m., he was in touch with his brother on his mobile number mentioned in the complaint. Further, when he was in Indapur Village, he saw his brother in front of shop of Bora seth at around 7.30 p.m. He had witnessed his brother pillion riding a motorcycle with Hanumant Raut (present Applicant) and, there was an unknown person who was riding the said motorcycle. Since his brother did not return till 9.00 p.m., he contacted him on his mobile phone but both his mobile numbers were switched of. Between 10.00 p.m. to 12.00 in the night, also he desperately tried his number but his brother could not be reached. In the morning, when he approached the police station along with Appa Mane, for lodging a missing report, he was informed that a dead body was recovered on the Kati Ramkund Road near Pandharwadi. He accompanied the police and identified the dead body to be his brother Ramchandra. He suspected certain persons in the FIR and categorically named the present Applicant and an unknown person accompanying him as the culprits.

4. Investigating machinery was set into motion on filing of the said FIR and the dead body was sent for postmortem. The postmortem report opined the cause of death due to head injuries with face injuries due to hemorrhage shock due to cardio-respiratory arrest. The case of the prosecution as contained in the charge-sheet is based on

circumstantial evidence. It is the Complainant who himself had seen his brother in the company of the present Applicant at around 7.30 p.m. in Village Indapur. Another witness is Shivaji Borate, whose statement has been recorded on 06/04/2018 and he is an employee of Machi Hotel located on Kathi Parande Vasti, 59, Phata Canal. He states that at around 8.00 p.m., three persons arrived in his hotel riding on a black coloured motorcycle and one person ordered Thali with fish. He served dinner to them and overheard one person stating, Hanumant, when are you going to pay the *bishi* amount? Around 8.30 p.m., they finished their dinner and riding triple seat, they left in a motorcycle. This witness also speak of the time 8.30 p.m. when the deceased was last seen in the company of the Applicant and one unknown person. On arrest, the Applicant led to discovery of a motorcycle and blood stained clothes worn by him. The clothes were seized and referred for chemical analysis. Report of the chemical analyzer dated 31/12/2018 establishes that the shirt and jeans pant worn by the present Applicant bears blood stains belonging to Group 'A' and the blood group of the deceased has been assessed to be 'A'. This incriminating material is compiled against him in the charge-sheet and he has been charged for committing homicide.

5. As far as co-accused Jamshed Shaikh is concerned, the only circumstance, which the Court noted while releasing him on bail is that he was last seen together by Raja Mane. It was observed that the prosecution will have to establish that the time gap between the deceased being seen with the accused and the time of death was very small to make it an incriminating circumstance. With this observation,

the Applicant came to be released on bail.

6. As far as the present Applicant is concerned, apart from the circumstances of last seen together and the Applicant being clearly identified by the Complainant himself, who is the brother of the deceased, the recovery of blood stained clothes and the report of the chemical analyzer which states that the blood stains were of blood group 'A', which was the blood group of the deceased is another incriminating circumstance. The burden, therefore, will have to be discharged by the Applicant at the time of trial to establish his innocence. At present, in the light of the incriminating material contained against him in the charge-sheet, which will have to be woven in the form of chain of circumstances indicting him in the offence, no case is made out for bail. The offence being serious and grave, the Application is rejected.

SMT. BHARATI DANGRE, J.