

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

CRIMINAL BAIL APPLICATION NO. 853 OF 2019

David @ Suhas Shantidas Kadam ...Applicant

V/s

The State of Maharashtra & Anr. ...Respondents

Mr. Debajyoti Talukdar for the applicant.

Smt. Geeta P. Mulekar, APP for the State/respondents.

CORAM : PRAKASH D. NAIK, J.

DATE : 14TH JANUARY, 2020

PC :

1. This is an application for bail in C.R. No. 171 of 2016, registered with Dehu Road Police Station, Pune, for offence punishable under Section 302 r/w. 34 of Indian Penal Code, 1860 ('IPC' for short).

2. The applicant was arrested on 22.07.2016. The prosecution case is that, on 17.07.2016, the complainant attached to Dehu road Police Station received information that dead body of unknown person is lying at Nigadi Naka. The complainant proceeded to the said place and noticed that body of person. He had sustained head injury. There were pieces of liquor bottle with blood stains near the body. First Information Report ('FIR' for short) was registered on 17.07.2016. Statement of Vinod Waghmare was recorded

on 18.07.2016. He stated that name of deceased was revealed as Ajay Waghmare. The prosecution case is that, the accused has killed deceased, on account of previous enmity. Statement of witnesses were recorded. Charge-sheet is filed.

3. The applicant preferred an application for bail before the Sessions Court, which is rejected by the order dated 19.07.2017.

4. Learned counsel for the applicant submitted that, the FIR was registered against unknown person. There is no eye-witness to the incident. There is no direct evidence. There is no recovery or discovery of any incriminating articles from the applicant. Applicant is in custody for three and half years.

5. Learned APP submitted that, the applicant is habitual offender. Motor-cycle used in the incident and his shoes were recovered from him. He was arrested in another case. During the course of investigation in that case, the applicant's involvement was disclosed. There are witnesses, who have last seen deceased with applicant and absconding accused. He has been identified in the parade.

There are antecedents against him.

6. The FIR was lodged against unknown person. There is no eye-witness to the incident. Deceased was identified as Ajay Waghmare. Statement of Irfan Pathan was recorded on 19.07.2016. At about 7.00 p.m. David @ Divtya came on motor-cycle at the place, where the mother of witness was selling vegetable. David told the witness to accompany him to celebrate birthday of their friend Suraj Ghodke. Both of them went to building no. 11. They met Suraj Ghodke. At that time, their friends Aman Shinde, Sagar Palkhe, Pratik Bagate, Ganesh Hadvade, Mago, Agal @ Ajay Waghmare, Dinesh Gaikwad, Pankaj Ovhal and other three to four persons were standing at that place. They were called by David for birthday celebration. They celebrated birthday of Suraj Ghodke by cutting cake. David called all the boys near building no. 3. Witness Irfan Pathan, friend of Mago and David proceeded on motor-cycle to wine shop. David went to the wine shop and brought liquor. All of them went to building no. 3. Sagar Palkhe, Pratik Bagate, Ganesh Hadvade, Agal @ Ajay Waghmare, Mago and other persons were standing near the building. Some of them consumed liquor. Agal @ Ajay Waghmare and David got up. Agal @ Ajay Waghmare told David that, he want to buy footwear

and David decided to accompany Ajay. He also told the Irfan to accompany them. They proceeded on motor-cycle. On the way, they met Angya. David stopped the motor-cycle and spoke to Angya. He told the witness (Irfan) to go home. Thereafter, David, Agal @ Ajay Waghmare and Angya went together. Statement of Pankaj Ovhal was recorded on 19.07.2016. He is stated that on 16.06.2016 he had participated in the birthday celebration of Suraj Ghodke. He also stated that, several persons including the applicant had consumed liquor. David @ Suhas Kadam, Agal @ Ajay Waghmare and Elli @ Irfan Pathan proceeded on motorcycle of David. Agal was sitting between David and Elli. Next day, he learnt that, David has been killed at Nigadi Naka. Subsequently, he learnt that, Agal was murdered and not David. Thereafter, he met David and noticed some abrasion near his eyes. Statement of Rahul Vitkar was recorded on 22.07.2016. He saw Angya @ Angad Kamble and David on 16.07.2016. David consumed liquor and Angya consumed Ganja. Angya had stated that on that day, they will have to take wicket of someone. Both went together. Statement of Balaji Kamble was recorded on 23.07.2016. He has stated that, on 15.07.2016, Suhas @ David had taken his motor-cycle. During the course of

investigation, statement of Prashant Shetty and Mohan Gorkha were recorded. They have stated that, on 17.07.2016 at about 10.30 p.m., he came to know that one person has been murdered. One of the killer had purchased cigarette at his shop on 16.07.2016. He also learnt that applicant and others had committed murder and he would identify person who had visited his Tapari for buying cigarette. On 23.07.2016, the accused was arrested. One of the accused had purchased a cigarette packet from him and he was identified him, if shown. Mohan Gorkha had stated that on 16.07.2016, one person had come to his hotel for buying Bisleri water. On 17.07.2016, he learnt that one person has been murdered. He told the police that, one person has visited to buy water bottle and he would identify that person. Identification parade was conducted. On 08.09.2016 both the witnesses had identified the applicant.

7. Learned counsel for the applicant further submitted that, the only evidence against the applicant is last seen together, which is weak piece of evidence. There is no eye-witness to the incident. There is no independent evidence to corroborate to show the involvement of the applicant in the crime.

8. Learned APP further submitted that, statement of witnesses Prashant Shetty and Mohan Gorkha mentioned that, on day of incident and the relevant time, the applicant had visited them. Statement of Irfan and other witnesses show that the applicant was last seen together with deceased. The shoes of the applicant were recovered. There was mud on the shoes. The Forensic report mentions that the mud found on the shoes and mud from place of incident matches. There is recovery of the motor-cycle from the applicant.

9. Undisputedly, there is no eye-witness to the incident. There is no direct evidence. The statement of witnesses relating to last seen together, is not strong circumstance. Motive for committing crime is not clear. Mohan Gorkha and Prashant Shetty came to know about murder and the fact that, some persons were arrested. They stated that, they will be able to identify the person, who had visited them on the previous day for buying water bottle and cigarette. They have identified the applicant. The statements of witnesses disclose that applicant had left with Agal to buy footwear at requesting of Agal. The conduct was natural. On the way he met Angya. Thereafter, they left together. It is not clear how applicant

would suddenly decide to liquidate Agal. He has no enmity with him. Matching of mud is not strong circumstance to establish crime. The applicant is in custody from 22.07.2016. Although, there are antecedents against him. Considering the nature of evidence, bail can be granted to the applicant.

ORDER

- (i) Bail Application No. 853 of 2019, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.171 of 2016, registered with Dehu Road Police Station, Pune, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report concerned Police Station, once in a month on every first Saturday between 10.00 a.m. to 12.00 noon till further order.
- (iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)