

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

BAIL APPLICATION NO.1077 OF 2019

Sandeep Ajabnarayan Mishra	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Sandeep Mishra a/w Mr.Prakash Mishra, Advocate for the Applicant.

Mrs.Geeta P. Mulekar, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 08, 2020.

P.C. :

This is an application for bail in connection with C.R.No.74 of 2017, registered with New Panvel Police Station, Navi Mumbai, for the offences punishable under Sections 302 and 201 read with 34 of Indian Penal Code ("IPC", for short). Applicant was arrested on 21st June, 2017.

2 The case of the prosecution is that dead body of the deceased was found on 20th June, 2017, in the forest near Padke building which is 50 meters away from Mumbai Goa Highway. Hence, First Information Report ("FIR", for short) was lodged on

20th June, 2017, against unknown person. Statements of wife of the deceased was recorded on 7th July, 2017. In the said statement, she has stated that there was dispute between her husband (deceased) and the co-accused Pundalik Mhatre, who were brothers in relation to property. Pundalik Mhatre had misappropriate compensation towards land acquisition. The deceased had filed complaint with Pen Police station. On 16th June, 2017 there was a quarrel between Pundalik and family of complainant. There used to be quarrels between them. The person named Mishra was frequently visiting house of Pundalik Mhatre. On 17th June, 2017, at about 8:00 a.m., while the complainant and deceased were in agricultural field, Mishra had visited there and he was talking to them. He had brought bananas. While they were leaving the field Mishra told the wife of the deceased that she may proceed further and her husband (deceased) would come with him. However, the husband did not return. Co-accused Pundalik Mhatre was heard telling some persons that the deceased would return after a period of ten days. Subsequently, she learnt that the dead body of her husband was found. She also learnt from police that the person named Mishra was called by Pundalik and he hit her husband by stone. The investigation proceeded. Statement of other persons were

recorded. Charge-sheet is filed.

3 Learned counsel for the applicant submitted that the entire case is based on circumstantial evidence. There is no eye witness to the incident. There is no evidence to establish the complicity of the applicant in the crime. There is no incriminating recovery from the applicant. There was no motive for the applicant to commit murder. The statement of the wife of the deceased merely mentions that the applicant was supposed to accompany deceased and follow her. It is further submitted that the prosecution is relying upon CDR. It is submitted that the cell phone no.9028721450, does not belong to the applicant. There is no evidence that the applicant had made any calls from the cell phone to the co-accused. The tower location of cell phone no. 9028721450 and 9823520378 differs. The cell phone no. 9823520378, stands in the name of applicant, however, the other cell phone do not belong to applicant and the documents speak otherwise. It is submitted that the evidence in the form of chit recovered merely mentions the bank account number of the applicant. No amount was transferred to the said account. The applicant is in custody since 2 and ½ years. There are no criminal antecedents against applicant.

4 Learned APP submits that there is strong circumstantial evidence against the applicant. The wife of the deceased has clearly stated that the applicant was last seen in the company of the deceased. Thereafter, the deceased was not found. It is submitted that the co-accused Pundalik Mhatre was on inimical terms with the deceased on account of property dispute. He was brother of the deceased. With the help of the applicant, the deceased was liquidated and accused tried to destroy the body. It is submitted that the cell phone numbers 982350378 as well as 9028721450, were used by the applicant. There are several calls on the cell phone of the accused Pundalik Mhatre and cell phone number 9028721450. There are also calls on the cell phone number which is in the name of the applicant and the cell phone of the co-accused. The tower location of the cell phone utilized by the applicant was near the place of the dead body of the deceased. It is further submitted that the aforesaid SIM Cards were used in the same mobile phone which is fortified by the IMEI number by both the SIM cards. It is further submitted that the documents relating to cell phone no.9028721450 indicate that it stands in the name of Rajesh Jayram and the reference of the accused Pundalik Mhatre was given while applying for the SIM Card. It is, therefore, submitted

that there are sufficient circumstances to show the involvement of the applicant in the crime.

5 As stated above, there is no eye witness to the incident. There is no other incriminating recovery from the applicant. The cell phone of the applicant was not seized. However, it is the case of the prosecution that there are calls *inter-se* between the applicant and the co-accused on the date of incident. It is also alleged that the tower location is also an incriminating circumstance. However, the documents relating to cell phone number 9028721450 stands in the name of Rajesh Jairam. Apparently, his statement has not been recorded during the course of investigation. The last seen together spelt out from the statement of Jaywanti Mhatre, recorded on 27th June, 2017. The dead body of the deceased was found on 20th June, 2017. Statement of wife of the deceased would indicate that the applicant was on visiting Pundalik Mhatre. There was animosity between deceased and Pundalik Mhatre. According to her, applicant met deceased for the first time on 16th June, 2017, and he told her that she should proceed ahead and the applicant would accompany deceased and follow her. The version of the wife of deceased witness does not appear to be natural. There

was enmity between Pundlik and deceased. The witness had not stated that applicant had approached them or had conversation with them earlier. It is difficult to believe that he would approach them with banana in field on 16th June, 2017. The circumstances relied upon by the prosecution may indicate suspicion, however, there is no strong evidence against the applicant. He is in custody since last two and half years. There are no criminal antecedents against him.

6 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1077 of 2019, is allowed;
- (ii) The Applicant is directed to be released on bail in connection with C.R.No.74 of 2017, registered with New Panvel Police Station, Navi Mumbai, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall attend the concerned police station once in a month on first Saturday of the month, between 10:00 a.m. to 01:00 p.m., till further orders;
- (iv) Applicant shall not tamper with the evidence and shall not approach the wife of the deceased or any of the witnesses, till the conclusion of trial;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)