

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1393 OF 2019

Bhushan Vijay Gaikwad	Applicant
versus	
The State of Maharashtra	Respondent

WITH
CRIMINAL BAIL APPLICATION NO.2624 OF 2019

Sunil Dattatraya Kadu	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Prashant P. More with Chandrakant Popat Yadav for applicant in
BA No.1393/2019.

Mr.Abhishek R. Avachat for applicant in BA No.2624/2019

Mrs.A.A.Takalkar, APP for State in BA No.1393/2019

Mr.H.J.Dedhia, APP for State in BA No.2624/2019

Mr.Vinayak Devkar, API (IO), Velha Police Station and M.Y.S.Garud,
PC, Velha Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 10th February 2020

PC :

1. The applicants in both these applications were arrested in CR No.63 of 2018 registered with Velha Police Station for offence u/s 302 r/w 34 of Indian Penal Code. The FIR was registered on 9th July 2018.

2. The prosecution case is that complaint was lodged by Smt.Ashwini Ganesh Balge alleging that on 8th July 2018 when she had visited the house of her mother, she did not notice her brother Yogesh and hence she made inquiries about his whereabouts. Complainant's mother told her that Yogesh had left the house informing her that he is meeting Sunil Dattatraya Kadu at Warje Bridge. However, he did not return home. The complainant called Yogesh on his cell phone. However, it was found switched off. The complainant then gave a call to Sunil Kadu. He informed her that he has come to Pune from Mumbai for the purpose of work. He also stated that Yogesh met him in the morning at Warje Bridge and thereafter he has left with his friends. The complainant made inquiry with friends of Yogesh. However, she could not get the required information about the whereabouts of Yogesh. On 9th July 2018, the complainant made inquiry in the company where her brother Yogesh was working. She inquired with his friends but she could not get any information. She again gave call to Sunil Kadu. He informed her that Yogesh was having illicit relationship with his niece Sujata Shinde. This was informed to him by husband of Sujata Mr.Mandar Shinde. Hence, on 8th July 2018, Sujata and Yogesh were called at Warje Bridge and thereafter Mandar, Sujata, Yogesh and he himself left together in Alto Car at Khadakwasala. Thereafter they had a discussion and advice was given to Yogesh and Sujata and thereafter he went to Mumbai. On 9th July 2018 at about 5 pm, complainant received information from the Police that one injured person is found in the area of Warasgaon Dam and he has been brought to Sasoon Hospital for treatment. The complainant visited Sasoon Hospital and noticed that her brother Yogesh was brought to Sasoon Hospital. He was declared dead. She made further inquiries

and learnt that on 8th July 2018 at about 10 to 10.30 am, Yogesh was called by Sunil Kadu and thereafter the accused had acted in connivance with each other and on suspecting that he was in relationship with Sujata, he was killed by the accused by hitting him by stone on his head.

3. The statements of witnesses were recorded. The accused were arrested. On completing investigation charge sheet was filed. The applicants preferred applications for bail before the Sessions Court. The said applications were rejected.

4. Learned advocate for applicant in BA No.1393 of 2019 preferred by Bhushan Gaikwad submitted that there is no eye witness to the incident. The entire case is based on circumstantial evidence. There is no recovery or discovery from the applicant. There is no cogent evidence to show the complicity of the applicant in the crime. The applicant was arrested on the basis of suspicion. There are contradictions in the statements of witnesses. The applicant had no enmity or grudge against the deceased. The applicant had no motive to kill the deceased. There is no evidence to establish that the applicant and the co-accused were together at the time of murder of Yogesh Dhone.

5. Learned advocate appearing for the applicant in BA No.2624 of 2019 preferred by Sunil Kadu submitted that there is no evidence to show the involvement of the applicant in the crime. The case is based on circumstantial evidence. However, merely on suspicion the applicant has been arrested in this case. The applicant had no enmity with the deceased. He is being implicated in this case

because wife of Mandar was niece of the applicant. There is no evidence to show that the applicant was present at the place of crime. There is no eye witness to the incident. Assuming that there are calls between the accused, they were known to each other and the call made by them inter-se, cannot be considered to be circumstance to show the involvement of the applicant in the offence. There are no criminal antecedents against the applicant. He is in custody from the date of arrest.

6. Learned APP submitted that there are strong circumstances showing involvement of the applicants in the crime. The statement of complainant and the statement of other witnesses discloses the complicity of the applicants in the crime. The witnesses have stated that the applicants were together along with the deceased. They took the deceased in the jungle area and he was killed by hitting him by stone on his head. After committing the crime the accused including the applicants returned together. However, the deceased was not with them. There is evidence in the form of call records which shows that there were calls between the applicants and there was a call between the applicant Sunil Kadu and the complainant. The tower location also shows that prior to incident and after incident the accused were together. At the place where the actual murder took place, there is no tower and therefore there was no trace of tower location. However, before that, the applicants and other accused were together along with the deceased. The applicant Sunil Kadu tried to mislead the complainant by telling her that he is at Pune and that the deceased had left with his friends.

7. The FIR was lodged by sister of the deceased. On 8th July

2018, the deceased had left the house by informing his mother that he has been called by Sunil Kadu (applicant in BA No.2624 of 2019). Since he did not return, the complainant gave a call to Sunil Kadu. He informed her that he had come to Pune from Mumbai. He met Yogesh at Warje Bridge and that he had left along with his friends. However, in spite of making inquiries, the whereabouts of Yogesh (deceased) could not be traced. On the next day he was found in injured condition in the area of Warasgaon Dam. He was taken to hospital and declared dead. The first information therefore discloses that the deceased had informed his mother that applicant Sunil Kadu had called him at Warje Bridge and he is going to meet him. Thereafter he did not return. Statement of Sujata Mandar Shinde was recorded on 11th July 2018. She has stated that on 8th July 2018 her uncle Sunil Kadu called her husband Mandar at Chandni Chowk. Thereafter Mandar went to Chandni Chowk. After some time she received a call from Mandar and he called her at Warje Malwaddi Chowk. Hence she went to the said place. Her husband Mandar, her uncle Sunil Kadu were present. Yogesh gave a call to Sunil Kadu. He was informed that they are visiting the Police Station to lodge complaint against him. At that time Yogesh told them not to go to Police for lodging complaint and they can resolve the dispute. After some time Yogesh came at that place on motorcycle. He sat along with them in alto car. All of them proceeded in the car towards Khadakwasla Purje. Mandar slapped YYogesh. Thereafter Mandar called his friend Bhushan Gaikwad (applicant in BA No.1393 of 2019) and Ganesh Kavale. Both of the came on motorcycle. She was dropped in the house of Paigude who is known to Bhushan Gaikwad. Her husband Mandar Shinde, Sunil Kadu, Bhushan Gaikwad, Ganesh Kavale and Yogesh Dhone left together in the alto car. They returned

late in the night. At that time she noticed her husband Mandar, uncle Sunil Kadu, Bhushan Gaikwad and Ganesh Kavale in the car. However, Yogesh was not with them. She inquired about him with them. However, they avoided to answer. Subsequently she learnt that on suspecting that deceased Yogesh was having illicit relationship with her, he was taken to secluded place in the mountain area and was killed by throwing stone on his head.

8. From the statement of Sujata Mandar Shinde it can be seen that the applicants, the co-accused and the deceased were together. Her husband has slapped Yogesh Dhone. She was dropped in the house of relative of Bhushan Gaikwad and all of them left together. They returned together without Yogesh Dhone. This is a strong circumstance against the applicants. Statement of Sudhir Ghadge, Police Sub-Inspector attached to Sinhgad Police Station was recorded on 11th July 2018. He stated that Ganesh Kawade was taken into custody and during interrogation he disclosed that the deceased was killed by accused. He showed the place there the body was thrown. The dead body of the deceased was recovered. Learned counsel for the applicant in BA No.2624 of 2019, however, submitted that even the statement made by the accused Ganesh Kawale as referred to in the statement of Sudhir Ghadge would indicate that the applicant Sunil Kadu was not present at the time of murder. Statement of Swati Maruti Parge discloses that on 8th July 2018, Bhushan Gaikwad came with his friend Mandar Shinde and his wife and relatives. Bhushan Gaikwad told her that wife of his friend Sujata be kept in her house till they return home after visiting their friend. All of them left together in alto car. Thereafter she made inquiry with Sujata but she could not disclose much to her. In the evening

Bhusnan Gaikwad came and called Sujata. Thereafter Bhushan Gaikwad, his friend Mandar Shinde, his relative took Sujata hurriedly and left in alto car. Version of Swati Parge corroborates the statement of Sujata Shinde. Thus, the fact that the applicants were together was established by cogent evidence.

9. During investigation the call data record of the accused was collected by the investigating officer. The details about the cell phone numbers of the accused were also collected by the investigating officer. The cell phone number of the complainant and the deceased were also revealed. The phone number of Mandar, Bhushan, Ganesh and Sunil Kadu were collected. The document relating to the sim cards of phone numbers were also collected during investigation. The investigation revealed that there were calls between the accused. The investigation also revealed through tower location that the accused were together before and after the incident. However, at the place where the dead body was found, there was no tower and therefore location could not be traced. However, prior to that, it is disclosed that the accused were together which is evident from the tower location. The accused were in the area near the crime which is evident from the tower location. Thus, although the case is based on circumstantial evidence, there are strong circumstances to show involvement of the applicants in the crime. It is pertinent to note that the applicants and the deceased were together in the alto car and they left in the car. While returning, the deceased was not amongst them. This fact is corroborated in the statement of Sujata Shinde. In the circumstances, no case for grant of bail is made out.

10. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.1393 of 2019 and Criminal Bail Application No.2624 of 2019 are rejected.

(PRAKASH D. NAIK, J.)

MST