

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

BAIL APPLICATION NO.2049 OF 2019

Mr. Vikas Baburao Varak ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Abhinav Chandrachud i/by Mr. Premkumar Pandey
for the Applicant.

Ms. P.P.Shinde , APP for the Respondent-State.

PSI Vhaskoji attached to Tulinj Police Station present.

CORAM : SANDEEP K. SHINDE J.
DATE : 24th FEBRUARY, 2020

P.C. :

Heard.

2. Applicant is seeking his enlargement on bail in Crime No.1268 of 2018 registered with Tulinj Police Station, Nalasopara for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 ('**IPC**' for short).

3. Prosecution's case is based on circumstantial evidence.

4. Be-headed dead-body of the deceased (Vikas) was found near the stream at Nalasopara and the head was kept in Rexin bag along with small sized sword allegedly used for committing his murder. Motive, alleged is that the applicant and the deceased were interested in one and same girl.

5. Applicant came to be arrested on 21st November, 2018 and at the relevant time, he was residing at Nalasopara.

6. Prosecution, to show complicity of the applicant in the subject crime, has relied on first circumstance, i.e., the statement of shop-keeper, who had allegedly sold weapon to the applicant, which was eventually found in a bag near the dead-body of the deceased. However, it may be noted that in the absence of test identification parade, shop-keeper's statement, recorded that on 17th November, 2018 that

he had sold the alleged weapon, i.e., knife to the applicant, therefore, is of no relevance at least at this stage.

7. Next circumstance that the prosecution has relied upon, is the CCTV footage, which shows in the night intervening 18th and 19th November, 2018, applicant's presence was noticed at Virar Railway Station at around 00.50 to 00.35 hours of 19th November, 2018 to contend that, the clothes, which were allegedly worn by the applicant as noticed in footage were recovered under Section 27 of the Indian Evidence Act, 1871 on voluntary disclosure made by the applicant. It is, therefore, submitted this circumstance and his conversation with deceased by telephone before the alleged occurrence is sufficient to deny bail to the applicant. It may be noted, though the clothes had red stains and were thereafter sent to Chemical Analyser, the report for the same is awaited.

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It may be noted, time and again hearing of this application was adjourned to enable the prosecution to produce C.A.Report, however, was not produced. That even otherwise C.A.Report is not a substantial piece of evidence. Therefore, at this stage, this circumstance also cannot be taken into consideration. It may also be noted that at the relevant time applicant was residing at Nalasopara and thus, his presence at Virar Railway Station cannot be held to be unusual or suspicious. The third circumstance relied upon by the prosecution is, Call Detail Records, which showed on 18th November, 2018 at around 22.31 hours to 22.57 hours, applicant had made calls to the deceased on his mobile and at the relevant time, his corresponding tower location was displaying at Dahisar. It may be stated that the alleged incident had taken place in the night intervening 18th and 19th November, 2018 and dead-body of the victim was found at Nalasopara, about 20 kms away from Dahisar, i.e., the tower location where his mobile was

last located.

8. Lastly, prosecution has relied upon the post-mortem report of the deceased which shows that he had suffered death due to cut of throat injury. Additionally, the Column No.17 of the post-mortem report also showed, more than 6 abrasions were found on the person of the deceased besides the cut-throat injury, which, according to prosecution suggests that the applicant and the deceased had engaged in a scuffle. However, it may be stated that no injuries were found of any nature on the person of the applicant when he was examined by the medical officer. Therefore, prima-facie, neither of these circumstances requires, elaborate consideration at this stage.

9. The learned counsel for the applicant has further brought on record that the weapon, which was

allegedly recovered from the spot, does not show finger-prints of the applicant and the reliance for which has been placed on the report of the forensic expert.

10. It is, therefore, submitted by the learned counsel for the applicant that there is no material on record to suggest complicity of the applicant in the subject crime. Additionally, it is submitted that since the investigation is over and the applicant is in custody since November, 2018 and that the trial may not commence or conclude in near future, applicant may be released on bail.

11. I have perused final report. As far as the first circumstance is concerned, admittedly, the test-identification parade was not conducted which, therefore, cannot render the statement of the shop-keeper substantive as far the Applicant is concerned. Nextly, as far as the clothes of the applicant recovered

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on his voluntary disclosure is concerned, since the report of the Chemical Analyser is awaited, the same cannot be rendered for consideration at this stage. Nextly, the Call Detail Records adduced indicate that though the applicant had called the deceased on 18th November, 2018 at around 22.57 hours, his tower location was at Dahisar although the dead body was found at Nalasopara, approximately 20 kms away from the spot. It may be noted that the prosecution could precisely point out time of the death of the deceased and, therefore, all circumstances, which are connected to the time of death and place of occurrences required to be established by leading evidence. Lastly, the injuries in Column No.17 of the post-mortem report adduced which suggested scuffle before the incident could also not be corroborated through any such injuries or marks on the person of the applicant on his medical examination.

12. Thus, in view of the facts of the case and in view of the evidence/material brought on record, a case is made out to release the applicant on bail. Furthermore, trial is not likely to commence or conclude in near future but his presence for the trial can be secured by imposing suitable conditions. Hence, the following order:

ORDER

(i) The applicant be enlarged on bail in Crime No.1268 of 2018 registered with Tulinj Police Station, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station as and when called;

(ii) The applicant shall inform his latest place of residence and contact number immediately after being released and/or change of residence or mobile details, if any, from time to time, to the Investigating Officer of the concerned Police Station;

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

13. The application is accordingly disposed off.

14. It is made clear that observations made hereinabove be construed as expression of opinion only for the purpose of granting bail and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)