

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

CRIMINAL BAIL APPLICATION NO.2067 OF 2019

Javed Amarbabu Shaikh

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Anand S. Patil, for the Applicant.

Mr. H. J. Dedhia, APP for the Respondent- State.

CORAM : PRAKASH D. NAIK, J.

DATE : 15th January, 2020

P.C.:

1. The applicant is arrested on 29th March 2018 in connection with C.R.No.54 of 2018, registered with Gokul Shirgaon Police Station, District-Kolhapur under Sections 302, 201, 120(B) r/w 34 of the Indian Penal Code.

2. The FIR is lodged on 24th March 2018. The applicant is arrested on 29th March 2018 and since then he is in custody. The prosecution case is that, on 04th November 2017, deceased Aziz Vajir had left his house and thereafter he did not return. On 24th March 2018 police party at Tamgaon village was informed by one Prakash Sasane that dead body was found in a pond in village in the land of one Raju Pawande. The first informant and others went

there. The dead body was taken out. It was found that, the dead body was tied to two cement poles with nylon rope and wire. The dead body was in a highly decomposed state. The postmortem report was conducted on the dead body. It showed that there was fracture of parietal bone and the cause of death was mentioned as "Evidence of head injury, however the opinion was reserved for accessory examination report". The prosecution case is that, the brother of deceased Rashid wanted to sell deceased's land to one Bhairu More through applicant. All the three are accused in this case. The present applicant and one Sunil More assisted these three accused in committing murder of the deceased with iron rod. After committing his murder, the dead body was tied to two cement poles which were brought from a poultry farm of one Indulkar and it was thrown in the pond. The investigation was completed. The charge-sheet was filed under Sections 302, 201, 120(B) r/w 34 of I.P.C. The DNA sample of the dead body was compared with those of the mother of the deceased. The report shows that, the dead body was of the deceased. The dead body was also identified by widow of the deceased. Her identification was based on the clothes worn by the deceased. Charge sheet is filed.

3. The learned counsel for the applicant submitted that, there is no eye witness to the incident. The entire case is based on

circumstantial evidence. The circumstances relied upon by the prosecution are not strong enough to establish the complicity of the applicant in the crime. The applicant had no motive to kill the deceased. The dispute relating to the property is between deceased and his brother. The applicant is in custody for a period of about twenty two months. It is alleged that, there is recovery of shirt of deceased from the quarry, which was thrown allegedly by the applicant. When death body was recovered it was noticed that, deceased worn shirt. Although it is alleged that the applicant was in possession of the cell phone of deceased, and sim card from cell phone was removed by him, the sim card could not be recovered from the alleged place where it was destroyed. There is no cogent evidence to establish that, the cell phone belongs to deceased. There is no material to show that the cell phone was in name of deceased. It is submitted that, the agreement relating to the transaction of property was executed between other parties. The applicant was not signatory to the said document in any manner. It is further submitted that, co-accused Rohit Kamble has been granted bail by this Court.

4. Learned APP submitted that, deceased is brother of the accused No. 1. There were property disputes between them. Deceased was liquidated by his brother with the help of the

applicant and other accused. There are strong circumstances to show the involvement of the applicant in the crime. Shirt of deceased thrown in the quarry, in bag was recovered at his instance. The bag also contained Adhar Card of deceased. The cell phone of deceased was in possession of the applicant, which was handed over to witness Raju Nadaf. His statement has been recorded. The said witness disclosed that, the applicant had handed over the cell phone to him. The cell phone is identified by the wife of deceased. The applicant had removed sim card from the cell phone and destroyed it. The offence is of serious nature. The applicant was involved in another case viz C.R.No.23 of 2018 where similar modus operandi was implemented in committing murder.

5. There is no eye witness to the incident. The entire case is based on circumstantial evidence. It is pertinent to note that, the accused No.1 is brother of deceased. It is the case of prosecution that, there were disputes between accused No.1 and deceased on account of property. The applicant is not signatory to the alleged agreement executed between co-accused in relation to property. There is no evidence to establish that the applicant was present at the place of incident. The circumstance that, the shirt was recovered from the quarry and the sim card was destroyed are not sufficient to further detain applicant for offence under Section 302 of Indian

Penal Code. Sim card or its price was not found at the place where it was allegedly destroyed. It is alleged that, the wife has identified the cell phone. There are similar phones of similar make. There is no cogent evidence to establish that, the cell phone belongs to deceased. The statement of witness Raju Nadaf indicates that, the cell phone was given by applicant, it was not in working condition. Since sim card was not found in phone, it is weak circumstance to allege that it belongs to deceased. Subsequently, during the course of investigation, the applicant was allegedly involved in C.R.No. 23 of 2018 which was the case of murder, where according to prosecution similar modus operandi was implemented while committing murder. While granting bail to co-accused the Court has taken into consideration the said fact. On charge of constorality Court while granting bail to co-accused had considered statement of Rohan Patil and Dadaso Mane who have stated that, the applicant and the other accused visited the hotel to discuss about some property. Considering the aforesaid circumstances, the case for grant of bail is made out.

ORDER

- (i) Bail Application No. 2067 of 2019 is allowed.

(ii) The applicant is directed to be released on bail in connection with C.R.No.54 of 2018 registered with Gokul Shirgaon Police Station, District-Kolhapur, on 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 No.2067 of 2019 stands disposed of.

(PRAKASH D. NAIK, J.)