

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2370 OF 2019

Pavan Shamrao Salunkhe, Adult,
R/o.Post Navin Kavathe, Tal.Karad, Dist.Satara
(Presently lodged at prison)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Siddharth L. Kamble for applicant.

Mr.H.J.Dedhia, APP, for State.

Mr.Kalpesh Patil for intervenor.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd March 2020

PC :

1. This is an application for bail in CR No.384 of 2018 registered with Umbraj Police Station, Taluka Karad, District Satara, for offences under Sections 302, 201 r/w 34 of Indian Penal Code.

2. The prosecution case is that the deceased Vaibhav Kharge was missing from 25th November 2018. Missing complaint was filed on 30th November 2018. It was stated that attempts were made to search the deceased but he was not found. Thereafter FIR was registered by Police Head Constable attached to Umbraj Police Station on 1st December 2018. It was alleged that investigation was conducted in respect to the missing person. Inquiries were made with relatives of the deceased. During investigation it was revealed that on 25th November 2018, at about 9 pm, Raju Masugade and the deceased had left together on Activa Scooter. Subsequently search

was conducted. It was revealed that Activa Scooter was belonging to the applicant. Secret information was received that the applicant and the co-accused Rajendra Masugade had strangled the deceased and the body was thrown near the dam at Krishna River. Further investigation was carried out. The information is in the nature of hearsay. The applicant and the co-accused were arrested. Statements of several witnesses were recorded. On completing investigation charge sheet was filed.

3. The applicant preferred application for bail before the Sessions Court, which was rejected by order dated 25th April 2019.

4. Learned counsel for applicant submitted that the entire case is based on circumstantial evidence. There is no eye witness to the incident. There is no incriminating recovery from the applicant. There is no legally admissible evidence to establish that the applicant has committed the murder of Vaibhav Kharge. He was arrested on suspicion. The prosecution is relying on the evidence of last seen together, which is not sufficient to establish the complicity of applicant in crime. The applicant is in custody from the date of arrest.

5. Learned APP submitted that although the case is based on circumstantial evidence, there are several circumstances which discloses involvement of applicant in crime. There are statements of witnesses which shows that on the date of incident, the deceased was in company of accused. There is evidence of last seen together. The victim was strangled by rope and his body was thrown near the dam on River Krishna. The applicant had motive to commit crime.

On the date of incident the deceased was called at the place of incident. The accused and deceased had consumed liquor and thereafter he was murdered. The applicant had instructed the co-accused to bring the deceased and this fact is fortified from the statements of witnesses. Thus, there is sufficient evidence against applicant. The offence is of serious nature.

6. Learned counsel for the intervenor also opposed the application for bail. He adopted the arguments of learned APP. He pointed out the statements of witnesses and submitted that the applicant and the co-accused were instrumental in committing murder of deceased. The applicant had grudge against deceased. There are statements which show that the accused and the deceased were together. There is strong evidence to show that the applicant is involved in offence.

7. I have perused the charge sheet. Missing complaint was filed by the father of deceased. The deceased was missing from 25th November 2018. From the FIR which was lodged on 1st December 2018 by the Police Head Constable, it appears that police had received secret information about involvement of the applicant. The FIR also indicate that the applicant was found at his residence and he was interrogated. HE has allegedly admitted the crime. It appears that the applicant was arrested on 2nd December 2018. According to the complainant, he was apprehended on 1st December 2018. In any case, the alleged confession to the police officer cannot be considered as legally admissible evidence. Statements of witnesses were recorded. They have stated that the witnesses Jiva Yadav, Suryakant and Sambhaji had given identical version. The statement of Kishor

and Arjun were also recorded. They have referred to the fact that on the date of incident, the deceased and the co-accused were seen together on motorcycle. The statements also indicate that the deceased had come on motorcycle with the co-accused and he left. The statement of Nilesh was recorded on 14th December 2018 in which he stated that at about 1.30 am he had seen the applicant and the co-accused together. On perusal of all these statements it can be seen that at the most they refer to the presence of the applicant and co-accused together in the night of incident, or presence of the deceased and the co-accused together. However, beyond that, there is no strong circumstance or evidence to show that the applicant has committed murder. The applicant cannot be detained further in custody on inferences or on suspicion.

8. Considering the circumstances, case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.2370 of 2019 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.384 of 2018 registered with Umbraj Police Station, Taluka Karad, District Satara, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall not tamper with evidence and he shall not approach the witnesses;
- (iv) The applicant shall stay out of jurisdiction of Umbraj Police Station, Taluka Karad, till further orders;

- (v) The applicant shall furnish details of the place of his residence to the Investigating Officer;
- (vi) The applicant shall regularly attend Trial Court proceedings on the date of hearing, unless exempted by Trial Court.

(PRAKASH D. NAIK, J.)

MST