

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

BAIL APPLICATION NO.2563 OF 2019

Sudhakar Tanaji Zambare

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Kuldeep U. Nikam, Advocate for the Applicant.

Mrs.Veera Shinde, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 14, 2020.

P.C. :

This is an application for bail in connection with C.R.No.348 of 2018, registered with Tasgaon police station, Sangli, for the offences punishable under Sections 302, 120-B, 201 and 176 read with 34 of Indian Penal Code (“IPC”, for short).

2 The case of the prosecution is that on 7th September, 2018, complainant received a phone call from his brother that Ramesh is lying dead near agriculture field. ADR No.130 of 2018, was registered. Initially it was felt that, deceased was addicted to liquor and must have collapsed under the influence of liquor and

sustained injuries, which resulted into his death. The last rituals were performed. There were rumours in the village that the sister of the deceased is instrumental in killing her brother and that she was in relationship with the applicant. It is further alleged that on the day of performing certain rituals on account of death of deceased, the complainant took the cell phone of accused Sarika and tried to find out whether there is any suspicious conversation recorded in the cell phone, as he suspected that she was behind the crime. Complainant noticed that there was conversation recorded vide Auto Call Recording between the accused Sarika and the applicant as well as Sarika and Pravin Shinde. Hence, FIR was lodged on 17th September, 2018. The applicant was arrested on 17th September, 2018. On completing investigation charge-sheet is filed.

3 Learned counsel for the applicant submitted that there is no direct evidence against the applicant. There is no eye witness to the incident. There is no strong circumstance to show involvement of the applicant in the crime. The entire case is based on the alleged recorded conversation on the cell phone of co-accused Sarika and the conversation between Sarika and Pravin. It is submitted that the conversation, which is relied upon

by the prosecution was not the first information. It was retrieved from the cell phone of Sarika. There is no evidentiary value to such conversation. The conversation cannot be taken as a circumstance to establish the offence *viz.* Section 302 of IPC. At the most, the conversation between co-accused and the applicant was in the light of the rumours in the village about their relationship. From the conversation it cannot be established that the applicant had committed murder of deceased.

4 Learned APP submitted that there are statements of witnesses regarding the complicity of the applicant in the crime. The applicant was in relationship with co-accused Sarika. There was dispute between Sarika and the deceased. Since the deceased was addicted to liquor, he was liquidated. The applicant and co-accused Sarika acted in connivance with each other. Statements of witnesses indicate that the applicant and the co-accused Sarika were close to each other. The conversation found in the cell phone of Sarika is strong circumstance to indicate that both of them were instrumental in committing murder of the deceased. The conversation also refers to the fact that victim ought to have been taken to some other place, which shows that there was plan to commit murder.

5 I have perused the document on record. Except the alleged conversation, there is no direct evidence against the applicant. There is no other circumstance to indicate the presence of the applicant at the place of incident where the deceased was found dead. There is no circumstance to establish as to how the deceased was killed by the applicant. The deceased was not seen in the company of the applicant at the place where the dead body was found. Thus, except the conversation, there is no other evidence. Only on the basis of such evidence, further detention of the applicant is not called for.

6 Prosecution is relying upon the statement of complainant and Pravin Shinde, recorded under Section 164 of Cr.P.C. Pravin Shinde has stated that he had conversation with Sarika (co-accused). She told him that there are rumours about it in the village. Pravin Shinde told her she should not worry if she had not done anything wrong. Sarika told him that the deceased was troubling his wife and mother, and, hence, she had told Sudhakar to kill him and that she should not disclose it to anyone. The witness than told others that Sarika has killed deceased with the help of assailants. Thereafter, he had recorded the conversation with Sarika. The statement of this witness was

recorded on 29th September, 2018. The conversation recorded between him and the co-accused is one of the circumstance used by the prosecution against the accused. In absence of any other corroborative evidence, only on such circumstance, the applicant need not not detained further in custody.

7 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.2563 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.348 of 2018, registered with Tasgaon police station, Sangli, he be released on bail 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 11:00 a.m. to 01:00 p.m., till further order;

(iv) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)