

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

CRIMINAL BAIL APPLICATION NO. 2741 OF 2019

Rohit Suresh Jadhav

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite, Advocate for the Applicant.

Mr. S. H. Yadav, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th February, 2020

PC :

1. The applicant is arrested on 3rd February, 2019 in connection with C.R. No. 25 of 2019 registered with Kodoli Police Station, Panhala, Dist. Kolhapur for offences punishable under Sections 302, 201, r/w Section 34 of Indian Penal Code.
2. The First Information Report (for short “FIR”) was lodged on 1st February, 2019. It was lodged against unknown person. The dead body of the victim was found in the area of Kuran Lake. Subsequently, the investigation proceeded. Statement of witnesses were recorded. Accused were arrested and on completing investigation charge-sheet is filed.
3. There is no eye witness to the incident. The case is based on

circumstantial evidence. The prosecution relying upon the theory of last seen together and recovered of cell phone of the victim from the applicant and recovered of the cloths from the applicant. The applicant had preferred application for bail before the Sessions Court, the said application was rejected by order dated 11th July, 2019.

4. Learned Advocate for the applicant submitted that there is no criminal background to the applicant. He has been arrested on suspicion. There is no direct evidence. The circumstances relied upon by the prosecution are not sufficient to establish his complicity in the crime. There is no eye witnesses to the incident. Nothing incriminating was recovered from him. The cloths recovered from him did not show blood stain. There are discrepancies in statements of witnesses relied upon by the prosecution to establish theory of last seen together. The evidence of recovery of cell phone of the deceased from the applicant suffers from serious infirmity and creates doubt. The receipt in respect to the said cell phone was recovered but not part of seizure Panchanama. It is not recovered under Section 27 of the evidence Act. IMEI number of cell phone of the injured was known to the police.

5. Learned APP submitted that, although the case is based on

circumstantial evidence, There are strong circumstances to show involvement of the applicant in the crime. During the investigation, the cloths of the applicant were recovered and the same are forwarded for chemical analysis. Report is awaited. Statement of witnesses were recorded, who had disclosed that the applicant was last seen with the deceased which is strong circumstance against the applicant. The statement of Vaibhav Arjun Gawali, Jalindar Bhagwan Patil refers to the fact that the applicant and the deceased were together on the date of incident and prior to offence.

6. I have gone through the charge-sheet. Undisputedly, there is no eye witness to the incident of murder. There is no strong motive to commit crime. The prosecution case is based on circumstantial evidence. Although the cloths were recovered at the instance of the applicant, the Panchanama does not mention that there were any blood stains on the cloths. According to prosecution, cloths are forwarded for Forensic opinion which is still awaited. I have perused the statement of Vaibhav Gawali. First statement of the said witnesses was recorded on 2nd February, 2019. In the said statement he has stated that on 31st January, 2019 at about 10.20 p.m. he was called by Prasad Lohar at Varana nagar, Vijay Chouk. He went their. Prasad Lohar was accompanied by Rohit Sambhaji Jadhav and Rohit Suresh Jadhav (Applicant). They were drinking liquor. Thereafter, he

left the place. Supplementary statement was recorded on 6th February, 2019. In that statement he stated that Prasad Lohar was seen with two other friends and they were consuming liquor. He was offered drink. However, he refused and left the place. He was shown two persons arrested by police and their names were informed to him as Rohit Sambhaji Jadhav and Rohit Suresh Jadhav. The supplementary statement of the said witnesses creates doubt about his previous version. From supplementary statement it appears that names of accused were informed to him at the police Station and they were shown to him by the police. Thus, the version of the said witnesses has to be considered with caution as it creates doubt. The other statement relied upon by the prosecution is of Jalindar Bhagwan Patil who stated that applicant, co-accused and the deceased were together at about 10.00 p.m. in the night of 31st January, 2019. The said statement was recorded on 6th February, 2019. He has stated that the deceased and the accused had purchased liquor for him. The other circumstances relied upon by the prosecution is the recovery of cell phone of the deceased. The prosecution is also relying upon the receipt in the name of Prasad Lohar with regards to purchase of Mobistar Cell Phone. It appears that the said receipt was not seized vide Panchanama. Statement of aforesaid witnesses were also recorded under Section 164 of Cr.P.C.

Learned Advocate for applicant submit that no one has said that deceased was carrying mobile phone. According to sister of the deceased, she received a call from the mobile phone of the deceased on the date of incident. However, there is no C.D.R. on record to establish that the call was made from the said cell phone to sister of deceased. Thus, the prosecution is primarily based on the circumstantial evidence. There is no evidence that applicant was present at the place of the incident at that time, when the deceased was killed. In these circumstances, further detention of the applicant is not called for. Case for grant of bail is made out.

7. Hence, I pass the following order :

ORDER

- i) Bail Application No. 2741 of 2019 is allowed;
- ii) The applicant is directed to be released on bail in connection with C.R. No. 25 of 2019 registered with Kodoli Police Station, Panhala, Dist. 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 11.00 am. to 1.00 pm. till further order.

- iv) The applicant shall not tamper with the evidence;
- v) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)