

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

BAIL APPLICATION NO.2815 OF 2019

Avinash @ Lalu Bhagwan Kute	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.M.S. Mohite, Senior Advocate i/b. Mr.Vikas B. Shivarkar,
Advocate for the Applicant.

Mr.M.G. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 18, 2020.

P.C. :

The applicant is seeking bail in connection with C.R.No.93 of 2019, registered with Kamshet Police Station, Pune, for the offences punishable under Section 302 read with 34 of Indian Penal Code (“IPC”, for short).

2 The case of the prosecution is that deceased Aayub Shaikh is nephew of informant. Four days prior to incident, Avinash @ Lalu B. Kute (applicant) and his mother Lata Kute visited house of complainant at about 10:00 p.m. and told him that he is called by Ramdas Kisan Kedare. Hence, the

complainant visited house of Ramdas Kedare along with them. Ramdas Kedare called his nephew Khandu Kute. Ramdas Kedare told complainant that he learnt that his nephew Aayub Shaikh has taken contract to kill Khandu Kute. Complainant was told to advise his nephew Aayub. The complainant assured his nephew would not do such act and he would advise him. After returning home, complainant informed about the said conversation to Aayub and his brother Yakub and advised Aayub not to indulge in any quarrel or dispute. On 2nd April, 2019, at about 8:00 p.m., complainant, his brother and all family members were sitting in the courtyard after having dinner. At that time, Khandu Kute and Lalu Kute came near the house of complainant and called Aayub. They took Aayub along with them. At about 9:00 p.m. Aayub returned home. He told that he had visited house of Khandu Kute. At about 11:00 p.m. two vehicles were stopped near their house. Khandu Kute got down from the vehicle and he called Aayub. In the light of the electric pole the complainant noticed that, in the second vehicle Lalu Kute and four other unknown persons were sitting. Khandu Kute took Aayub in Xylo vehicle and left. Aayub did not return home. His phone was found switched off. Inquiries were made with the family of Khandu Kute and Lalu Kute. Thereafter, it was learnt that Xylo car was found with body of

person at the outskirts. The complainant visited the said place. The vehicle was belonged to Khandu Kute. Body of Aayub was found in the car. There were injuries on his body. Hence, FIR was lodged on 3rd April, 2019, alleging that Aayub was murdered. The applicant was arrested. Other accused were also arrested. Charge-sheet is filed.

3 Applicant preferred an application for bail before the Sessions Court, Pune. The said application was rejected by order dated 17th August, 2019.

4 Learned counsel for the applicant submitted that the applicant has been arrested on suspicion. There is no authentic evidence involving him in crime of murder. On the day of the incident, the applicant was on duty at petrol pump. He had produced the CCTV Footage to establish his presence at petrol pump. Statements of complainant is not corroborated by any evidence. There is no eye witness to the incident. There is no incriminating recovery from the applicant. The version of the other witnesses is contradictory. Other witnesses had not referred to the presence of the applicant in the vehicle in which the victim Aayub was taken by the accused. Witnesses have improvised

their version subsequently in their statements under Section 164 of Cr.P.C.

5 Learned APP submitted that there are strong circumstance to show complicity of the applicant in the crime. Applicant had visited house of the complainant four days prior to the incident. The applicant was sitting in one of the car in which the accused had come near the house of the complainant and took away Aayub with them. On the day of incident, there was a call between the complainant and the accused no.1 at about 1:00 a.m. The tower location qua cell phone of the applicant was traced in the vicinity of the crime. The applicant was in company with co-accused on day of incident.

6 I have perused the charge-sheet. The alleged incident had occurred on 2nd April, 2019. FIR was lodged on 3rd April, 2019., by uncle of the deceased. According to the prosecution, accused Khandu Kute was suspecting that the deceased Aayub might kill him, as he has taken contract in that regard. Prior to incident, the complainant was called at the house of Ramdas Kedare, who had told the complainant to advise his nephew Aayub, as it was learnt that Aayub is likely to kill Khandu Kute.

According to complainant, the applicant was sitting alongwith unknown persons in one car, which had stopped near his house. Khandu Kute was sitting in Xylo car. The victim Aayub was called by Khandu Kate, and, he was made to sit in Xylo car. It is relevant to note that dead body of Aayub was found in Xylo car in which Aayub was allegedly taken away by Khandu Kute. The car was found on the outskirts. According to complainant, in the light from the electric pole, he could see that the applicant was sitting in another car. Supplementary statement of the complainant was recorded on 4th April, 2019. In that statement, he has stated that on 2nd April, 2019, at about 11:00 p.m., he along with his wife, son Yakub and others were sitting in the court yard of his house. Khandu Kute came there with Xylo car. Complainant had a glimpse at the car and noticed Khandu Kute and applicant in the car. He further stated that his brother Yakub and other family members had informed him that they had seen those persons in the car in the village. He mentioned the names of the said persons as Khandu Kute, Navnath Kedari, Babaji Kedari, Prakash Chinchawade and Yogesh Kedari. Thus, there is improvisation in the supplementary statement. In the complaint it was stated that Khandu Kute was in Xylo car and that the applicant and other unknown persons were in another car. In the supplementary

statement, he made reference to only one car with several persons who had named for first time as the persons whose names were disclosed by his family members. Thus, there was no reference of two cars. He also stated that he learnt that the police has arrested Babaji Kedari, Yogesh Kedari, Suraj Kate in murder of Aayub and that Xylo car in which the body of Aayub was carried was stuck, and, it was found lying on the outskirts. Thus, there is doubt about the version of witnesses, qua involvement of the applicant. During investigation, statement of Mumtaz was recorded on 4th April, 2019. She has stated that on 2nd April, 2019, at 7:00 p.m., she was sitting in the courtyard along with other family members. Xylo car owned by Khandu Kute stopped near their house. Khandu Kute, Navnath Kedari, Babaji Kedari, Prakash Chichawade and Yogesh Kedari were present in the car. Khandu Kute called Aayub. Spoke to him about ½ hour and took him in the car. Aayub did not return home. On the next day, his dead body was found. She is aunt of deceased and wife of complainant. She has not referred to two vehicles. The incident of 11:00 p.m. mentioned by complainant has been referred to have occurred at 7:00 p.m. There is no reference to any incident being occurred at 11:00 p.m. She has also not referred to the incident that Aayub had initially left the house and

then returned home at about 09:00 p.m. Statement of brother of the deceased Javeer Shaikh was recorded on 4th April, 2019. It is identical to statement of Mumtaz Shaikh. He has not referred to name of the applicant and the alleged incident dated 2nd April, 2019 to have occurred at 7:00 p.m. Statement of Yakub Shaikh was recorded on 4th April, 2019. he is father of deceased. He has not referred to the presence of the applicant in the car. His version is similar to Javeer and Mumtaz. Statements of mother of deceased Sabira Shaikh was recorded on 4th April, 2019, which is also identical to the aforesaid witnesses. Thus, except complainant all the witnesses stated above had not referred to two vehicles and presence of the applicant in one of the vehicle. They have also not referred to the fact that the incident had occurred at 11:00 p.m. It is pertinent to note that the version of the complainant is contrary to those witnesses. It is also noted that the complainant has improvised his version in the supplementary statement. The prosecution has relied on statement of Machindra Kedari dated 20th April, 2019. the statement is recorded belatedly. Apart from that nothing adverse can be inferred from his version. He has stated that on 2nd April, 2019, he was at his snacks center. At about 12:15 hrs., he was closing his stall. He saw Khandu Kute, applicant, Navnath Kedari,

Baban Kedari, Prakash Chinchawade and Yogesh Kedari, near his snacks center. He also stated that they used to meet at said place regularly. On the next day, he learnt that body of Aayub was found in the vehicle. From the statement of the said witness, it can be seen that the deceased was not accompanying the said persons although it is case of the prosecution that either at 7:00 p.m. or at 11:00 p.m. the deceased was made to sit in the car of Khandu Kute and taken away. At about 12:15 hrs., he was not found with the applicant and others. It is also relevant to note that it is the case of the applicant that he is working at the said petrol pump. He was on duty on that day. The witness have also stated that his snacks centre is situated near Taje Petrol pump. Therefore, nothing adverse can be inferred about the presence of the applicant at the said place. The prosecution is also relying upon the tower location. It is alleged that the place where the vehicle was found with the body of the deceased was at outskirts from the petrol pump. It is also admitted that for an area of about 300 meters, there is only one mobile tower, and, therefore, assuming that the tower location through cell phone of the applicant is located at the same tower it cannot be said that he participated in murder. According to applicant he was at petrol pump which is within diameter of mobile tower. The exchange of call with one

of the accused was admittedly known to him as apparent from the statement of Machindra Kedare. It cannot be inferred that the applicant was involved in murder. Learned APP has pointed out statement of Mumtaz Shaikh and Yukub Shaikh, which were recorded under Section 164 of Cr.P.C. In the said statement they have improvised their version; and given further details about the incident which had occurred on 2nd April, 2019 and 3rd April, 2019. they have stated that at about 11:30 p.m., the applicant and the other accused came near the house and took Aayub in their Xylo car. As stated above, they have not referred to presence of the applicant in the car. The subsequent statements were recorded on 7th May, 2019. considering the aforesaid circumstances, case for grant of bail is made out.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.2815 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.93 of 2019, registered with Kamshet Police Station, Pune, 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 stay outside the jurisdiction of Kamshet Police Station, Pune, till conclusion of trial;
- (iv) Applicant shall furnish details of his residence and mobile number to the investigating officer after he is released on bail;
- (v) Applicant shall not tamper the prosecution evidence and shall attend trial Court proceedings regularly, unless exempted for some reason by the trial Court;
- (v) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)