

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

CRIMINAL BAIL APPLICATION NO. 3038 of 2019

Mallikarjun Somling Birajdar ... Applicant

V/s.

The State of Maharashtra ... Respondent

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Satyavrat Joshi, Satish K. Kumbhar for the Applicant.

Veera Shinde, APP for the State/Respondent.

M. R. Mane, Paud Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21th JANUARY, 2019.

P.C. :

This is an application for bail in CR. No. I-75/2019 registered with Paud Police Station, Pune for the offences punishable under Sections 302 & 201 read with Section 34 of the Indian Penal Code.

2. The First Information Report (for short 'FIR') is lodged on 26th February, 2019 by Maruti Kokare, who was Police Patil of village Tamhini, Dongarwadi, Pune. The FIR mentions that a dead body was found around 12.00 p.m. on that day on Tamhini-Mugav road. The dead body was partially burnt and there were injuries on his head. On this basis, the FIR was lodged and investigation was carried out. The Applicant was

arrested on 12th March, 2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. The prosecution case is that the Applicant was under impression that the deceased Shridhar was harassing his brother's wife Poornima. The Applicant took help of co-accused Sanjay Ubhe and Yogesh Pimpalkar. With their assistance, he took the deceased to a secluded spot in Ghat and committed his murder by assaulting him. The postmortem shows that the deceased had suffered 7 injuries. Three of them were CLWs and cause of death was mentioned as "Cardio-Respiratory arrest due to hypovolemic shock due to grievous injury on head and burns. It is the prosecution case that after assaulting the deceased the accused had set him on fire.

4. Learned Counsel for the Applicant submitted that the entire case is based on circumstantial evidence. There is no eye witness to the incident. There are no criminal antecedents against the Applicant. The statement of the brother of deceased was recorded on 10th March, 2019. He has not attributed any motive to the Applicant. After the arrest of the applicant, statement of the said witness was recorded on 22nd March, 2019

in which he has stated that the Applicant and the co-accused were involved in crime as the deceased used to trouble the sister in law of the Applicant. It is submitted that the statements of Rohidas Sathe, Vitthal Ghayal and Namdev Kangude are not sufficient to show the involvement of the Applicant in the crime. As per their statements, the Applicant had visited their shop. There is no identification parade to identify the Applicant. The Applicant was taken by the police to the shop and petrol pump and then it was stated that he and the others accused were seen together. It is submitted that there is no other strong incriminating circumstance against the Applicant and the other accused Sanjay Ubhe and Yogesh Pimpalkar.

5. Learned APP submitted that the case of the Applicant can be distinguished from the co-accused. The Applicant had motive to commit the crime. There is evidence to show that the Applicant had visited petrol pump and shop. The witnesses have identified the Applicant. There is recovery of vehicle. Clothes of the Applicant were recovered during the course of investigation. The evidence on record is sufficient to establish the involvement of the Applicant in the crime.

6. I have perused First Information Report and the other documents. The entire case is based on circumstantial evidence as there is no eye witness of the said incident. On perusal of the statements of Rohidas Sathe, Vitthal Ghayal and Namdev Kangude and Balasaheb Awale, it can be seen that Rohidas Sathe and Vitthal Ghayal in their statements dated 19th March, 2019 stated that police had brought accused before them and they stated that accused had visited petrol pump on 25th February, 2019. The witnesses Namdev Kangude and Balasaheb Hiranman Awale in their statements stated that the accused were produced before them on 19th March, 2019. The witnesses stated that on 25th February, 2019 they had purchased Beer. There was no test of identification parade. It is pertinent to note that the two other accused are granted bail by this Court and the Sessions Court. The motive is attributed to the Applicant by the brother of the Applicant in the supplementary statement recorded after 12 days and after the arrest of the Applicant. It is not the case of the prosecution that the car was used in commission of crime but there is no authentic evidence in that regard. On perusal of seizure panchnama it can be noted that nobody stated that the car was used in the crime. The Applicant

was apprehended in the car. Considering the nature of evidence the case for grant of bail is made out.

7. Hence, I pass the following order:

ORDER

- i) The Bail Application is allowed.
- ii) The Applicant is directed to be released on bail in connection with CR. No. 75/2019 registered with Paud Police Station, Pune on their furnishing PR. 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 month on first Saturday of every month between 11 a.m. and 1 p.m. till further orders.
- iv) The Application stands disposed of.

(PRAKASH D. NAIK, J.)