

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

**BAIL APPLICATION NO.3477 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2020**

Ganesh Vithal Survase	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Ritesh Thobde a/w. Mr.Sagar Tambe, Advocate for the Applicant.

Mrs.A.A. Takalkar, APP for the Respondent – State.Mr.

Rohit Shevate i/b. Mr.Jaydeep D. Mane, Advocate for the Intervenor.

Mr.Vaibhav Markand, PSI, Mangalwedha Police Station, Solapur Rural, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 14, 2020.

P.C. :

This is an application for bail under Section 439 of Cr.P.C. in connection with C.R.No.369 of 2019, registered with Mangalvedha Police Station, Solapur, for the offences punishable under Section 302, 363, 364, 201 and 120-B of Indian Penal Code (“IPC”, for short.

2 Applicant is arrested on 5th October, 2019. On

completing investigation, charge-sheet has been filed. Prosecution case proceeds on the basis that deceased Santosh Shinde was missing from 29th July, 2019. Missing complaint was lodged with the police on 30th July, 2019. On 2nd August, 2019, a call was received by brother of the sister from a person who disclosed his name as Kishor Agarwal informing that Santosh is his friend and he is lying at Santacruz in an injured condition. The caller however did not disclose further details and after questioning him, gave evasive answers. During the course of investigation, SDR was ascertained through Cyber police station, Solapur and it was found that the number was registered with one Jwalaprasad Gupta. The statement of Jwalaprasad Gupta was recorded. According to prosecution, Shri Gupta has stated that the applicant is a person who made a call from the PCO which stands in his name, at the relevant time. Obviously he did not know, to whom the applicant spoke. It is further alleged that CCTV footage of the cameras installed at S.T. Stand at Mangalwedha was scrutinized and it was noticed that the deceased Santosh Shinde was in company of four persons. One Tanaji Bhosale was present. Undisputedly applicant was the person who seen in the CCTV Footage in the company of the deceased Santosh Shinde. It is alleged that during the course of

investigation, it was revealed that accused Tanaji was having illicit relation with wife of Santosh Shinde. Hence, he was abducted by the accused and murdered. His body was thrown at Vijaypur with a view to destroy the evidence. Primarily the case against the applicant that he had misled the investigating agency by stating that the injured is at Santacruz, Mumbai. The body of the deceased was found at Vijapur.

3 Apart from the applicant, other accused were arrested. Charge - sheet is filed.

4 Learned counsel for the applicant submits that there is no evidence against the applicant. He has not participated in the offence of murder. Except the alleged call on 2nd August, 2019, providing information that the missing person lying in an injured condition at Santacruz, Mumbai, there is no other situation. It is not the case of the prosecution that he was in company of the deceased at any point of time. There is no evidence that he was in vicinity of the crime or in any manner participated in the offence of murder.

5 Learned APP submitted that the applicant who was

the conspirator his participation was there right from inception. He had mislead the investigating agency. It is further submitted on instructions that the police had collected CDR, which is not part of charge-sheet. It is further submitted, on instructions, that there are calls between the applicant and the co-accused.

6 Learned counsel for the intervenor adopted the arguments of learned APP. Learned APP further submitted that one case is pending against the applicant for an offence punishable under Section 394 of IPC. Learned counsel for the intervenor submitted that assuming that the applicant is liable for an offence of 201 of IPC, considering the gravity of the offence, the applicant should not be granted bail. It is further submitted that the applicant had conspired with the co-accused, commit the crime. The necessary information provided by him show that he was participated in the crime. On account of misleading information accused tried to liquidate the decease.

7 I have perused the FIR and the other documents. Investigation is completed and charge - sheet is filed. The case qua the applicant is that he had made call on 2nd August, 2019, by giving incorrect information that the injured is at Santacruz,

Mumbai and thereby mislead to facilitate the co-accused. There is no other evidence to show the complicity of the applicant. There is no substantive evidence to establish the charge of conspiracy. It was alleged that since the applicant had provided incorrect information, it is presumed that he was the conspirator. The prosecution could not point out seizure of the cell phone of the applicant. It is not clear as to how the investigating agency has come to the conclusion that the calls were made by the applicant to the co-accused. It could not be pointed out that the applicant was at any point of time in the company of the co-accused, at the time of commission of crime. The CCTV Footage show that the deceased was in the company of the co-accused. The applicant had no motive to commit the crime. In the circumstances, case for grant of bail is made out.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.3477 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.369 of 2019, registered

with Mangalvedha Police Station, Solapur, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant is permitted to furnish cash security in the sum of Rs.25,000/-, for a period of four week;
- (iv) Applicant shall report 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 orders;
- (v) Bail Application stands disposed of;
- (vi) Interim Application 1 of 2020 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)