

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

CRIMINAL BAIL APPLICATION NO. 3400 OF 2018

Shashikant Bhau Bhosale	...Applicant
V/s	
State of Maharashtra	...Respondent

WITH

CRIMINAL APPLICATION NO. 1 OF 2019

Raju Bajrang Chavare	... Intervener
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IN THE MATTER BETWEEN:

Shashikant Bhau Bhosale	...Applicant
V/s	
State of Maharashtra	...Respondent

Mr. Nanaso V. Gaikwad for the applicant.
Mr. H. J. Dedhia, APP for State/respondent.
Mr. Satyavrat Joshi i/b. Nitesh J. Mohite for the intervenor.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th JANUARY, 2020

PC :

1. This is an application for bail under Section 439 of Cr.PC. The applicant is arrested in C.R. No. 349 of 2017, registered with Shivaji Nagar Police Station, Ichalkaranji, Kolhapur, for offences punishable under Section 302, 201 r/w. 34 of Indian Penal Code, 1860 ('IPC' for short). The applicant was arrested on 29.10.2017.

2. The case of the prosecution is that, Smt Chhaya Mhaske, mother-in-law of first informant, had given loan of Rs. two lakhs

to Shashikant Bhosale (applicant). Subsequently, he executed writing in that regard on document of stamp paper of Rs. 100. There was quarrel between applicant and complainants mother-in-law on account of repayment. On 9.10.2017, mother-in-law left the house. She did not return. Missing complaint was filed on 11.10.2017. On 28.10.2017 complainant met Revnath Kadam. He told that, on 9.10.2017, at about 9.20 p.m., applicant had called, mother-in-law of complainant and with help of Yuvraj Shelke, she was killed.

3. Investigation proceeded. Accused were arrested. On completing investigation, charge-sheet was filed.

4. The applicant preferred an bail application before the Sessions Court, which was rejected by Sessions Court on 28.06.2018.

5. Learned advocate for the applicant submitted that, there is no strong evidence to show the involvement of the applicant in crime. Dead body of the deceased was not recovered. Statement of witness are contradictory to each other. Statement of Revnath Kadam is not supported by any evidence. The applicant is not concerned with the crime. The case is based on presumption and assumptions with regard to homicidal death of Chhaya Mhaske. Missing report was lodged by relatives of Chhaya Mhaske. Dead body was not

discovered. There is no confirmation that the victim is dead. There were no genuine attempt to investigate that the victim is dead. No genuine attempt made to search the victim. The prosecutions case is based on circumstantial evidence and last seen theory. The said theory is not consistent and trustworthy. Statements relating to last seen theory are contradictory to each other. Hence, the said version cannot be believed. It creates doubt. There was no proper investigation. Learned Judge has wrongly relied on the confessional statement recorded by the Police. Such statement cannot be considered as evidence. Material sought to be relied upon by the prosecution is irrelevant and inadmissible in law. Prakash Kokare has been granted bail by this Court. There is no motive for the applicant to murder deceased. There are no criminal antecedents against the applicant. He is in custody more than two years. Charge-sheet is filed. C.A. report do not mention whether the blood group of victim matches. Learned advocate relied upon decision of the Supreme Court in the case of *Rishi Pal V/s. State of Uttarakhand*.

6. Learned APP submitted that there is sufficient evidence against the applicant. There was motive for the applicant to commit crime. He had obtained loan from the victim. He was not repaying the same. He had executed document accepting liability of loan. Merely,

on the ground of non-recovery of dead body, it cannot be said that the offence is not established. Learned counsel for the intervener reiterates the submissions advanced by learned APP. It is submitted that there are sufficient circumstances to show the involvement of the applicant. The clothes of accused are having blood stains. The accused disposed of body in river.

7. According to prosecution, the applicant had borrowed money from Smt. Chhaya Mhaske. He was not returning the same. Since, the victim kept on insisting for money, the applicant executed writing. Thus, motive to commit crime is money transaction. Statement of Somnath Patil indicate that on 9.10.2017 at about 9.30 p.m. he had seen accused Prakash Kokare standing outside his house. While he was talking to him they heard cries of lady and proceeded towards Bhoot Bungalow. They saw lady lying near bushes. She was recognised as Chhaya Maske. She was bleeding. Sickle was lying near her body. From torch light they noticed applicant standing near bushes. He left the place. Applicant was convicted for offence and had undergone sentence, hence there was terror in mind of people. Statement of Dynaneshwar @ Pintu Koli revealed that on 9.10.2017 Prakash Kokare was standing outside his house. He called applicant and asked him, is whereabouts applicant came from direction of

Bhoot Bungalow. The applicant took Dynaneshwar to Shanti Bar and told him that, he had assaulted Chhaya Mhaske by sickle. The argument advanced by the learned counsel for the applicant can be adjudicated at the time of trial. Revnath Kadam stated that, Yuvraj Shelke and applicant were putting body of deceased in bag. Thereafter, Prakash Kokare, applicant left on motorcycle with bag. There are strong circumstances, showing the involvement of the applicant in crime. The vital evidence is that the applicant was seen near the place of incident. The decision relied by the learned counsel for the applicant relates to appreciation of evidence.

8. In view of the aforesaid circumstances, no case for grant of bail is made out.

9. Hence, I pass the following order:

ORDER

- (i) Bail Application No. 3400 of 2018, is rejected.
- (ii) Criminal Application No. 1 of 2019 stands disposed of accordingly.

(PRAKASH D. NAIK, J.)