

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

CRIMINAL BAIL APPLICATION NO. 137 OF 2021

Arbaj Ayub Shaikh	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Rahul S. Kadam a/w. Maaz Syed for Applicant.
Mr. H. J. Dedhia, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 05th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 20 of 2020 registered at Solapur Taluka police station, Solpaur, on 12/01/2020, under sections 302 and 364 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on the same day and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The prosecution case is that the deceased Aamir and the present applicant were friends. The applicant had given

Rs.1500/- by way of hand-loan to the deceased Aamir. There was a dispute regarding that loan. The applicant wanted a mobile phone of the deceased if amount was not repaid. The deceased did not give his mobile phone and, therefore, the applicant got angry. On 11/01/2020 between 4:00p.m. to 10:00p.m. deceased who was aged 14 years was taken by the applicant to the farm of one Prashant Bichdu, situated near the road between Nannaj to Mardi. The applicant then made him to consume some liquor and assaulted him with stone on his head causing his death.

3. The First Information Report (for short 'F.I.R.') is lodged by the father of the deceased. He has stated that on 11/01/2020, in the evening, the deceased and the applicant were on their terrace and after some time both of them had left together. The deceased did not return till late evening, therefore, the first informant and others from the village started searching for him. Since he had left with the applicant, inquiries were made with the applicant. The applicant had returned home at around 9:00p.m. The applicant told all of them that the deceased Aamir

had gone to one Shubham. When the informant called Shubham, he denied that Aamir had come to him. Therefore, the informant suspected the applicant. Police were informed. They made inquiries with the applicant. He confessed to the commission of crime and informed about the spot where Aamir was lying injured. The informant and others went there. Aamir was seen lying in injured condition. He was removed to the hospital but he was declared dead before admission and, therefore, this F.I.R. was lodged.

4. Heard Shri. Rahul Kadam, learned counsel for the applicant and Shri. Dedhia, learned APP for the State.

5. Learned counsel for the applicant submitted that this case is based on circumstantial evidence and there are no eye witnesses. The only circumstance against the applicant is 'last seen together with the deceased', but that is a weak piece of evidence. He submitted that, even motive against the present applicant is weak, therefore, considering this background, the applicant

deserves to be released on bail.

6. Learned APP opposed this application. He submitted that, there are sufficient circumstances against the present applicant forming a complete chain and, therefore, he should not be released on bail. He submitted that, there are circumstances of motive, last seen together, as well as, recovery of mobile phone at the instance of present applicant.

7. I have considered these submissions and with the assistance of both learned counsel I have perused the entire charge-sheet. There are following circumstances against the present applicant;

i) Last seen together with the deceased.

In that context, there are statements of witnesses namely Jagannath Gawali, Datta Chaturbhuji, Aamir Shaikh, Trambak Dhule and Sagar Tonpe. All of them had seen the applicant going with the deceased together around the time of sunset. Some of these witnesses have stated that the applicant had

purchased liquor and deceased Aamir was with him.

ii) Second circumstance is of the statement of one Shubham Vitkar. He has stated that, in the evening he had made a phone call on deceased Aamir's phone number. It was picked up by the applicant and he told this witness that Aamir had gone out. This shows that the applicant was with the deceased and he had answered the phone call when he had already committed murder of the deceased.

iii) Third circumstance is of recovery of the mobile phone belonging to the deceased at the instance of the present applicant. It was recovered at the instance of the present applicant from his house on 13/01/2020 pursuant to the memorandum statement given by the applicant himself. This is another seriously incriminating circumstance against the applicant in the context of this case.

8. There is a statement of one Niranjana Tonpe who has spoken about the dispute between the applicant and the deceased. He has referred to the dispute of Rs.1500/- and also mobile phone.

These circumstances formed complete chain and they are seriously incriminating circumstances. The time when the applicant was seen together with the deceased was proximate to the time of finding of the dead body.

9. The deceased had suffered four injuries. One of them was multiple abrasions. All these injuries were on the forehead, nose or face and the case of death mentioned was 'head injury'. Thus, considering the incriminating circumstances against the present applicant, no case for bail is made out.

10. Application is rejected.

(SARANG V. KOTWAL, J.)