

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 443 OF 2021**

Rupesh Kasturi Labyahol	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Satyam Nimbalkar, for the Applicant.

Mr. A. A. Palkar, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 23rd November, 2021.

PRONOUNCED ON : 6th December, 2021.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 236 of 2019 registered with Gadhinglaj Police Station, District- Kolhapur for the offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that the informant was suspecting the character of his wife as she used to speak constantly on phone with the applicant. Therefore, the informant and his mother used to persuade

the applicant. However, the applicant continued to speak with the wife of informant.

3 On 22/09/2019 the informant had been to village Athani. On 23/09/2019 the informant received a phone call from his friend intimating that since wife is not well he should reach immediately. When the informant reached his house and enquired with his wife, his wife allegedly confessed that since the mother-in-law had personally seen her affair with applicant and had told that she would tell this fact to you, she (wife) and applicant killed mother-in-law by assaulting her by means of wooden log. The informant accordingly lodged the report.

4 Mr.Nimbalkar, learned Counsel for the applicant, submits that there is no direct evidence or circumstantial evidence against the applicant except the so called extra-judicial confession allegedly given by wife to her husband i.e. informant. In such circumstances, as the applicant has made out a case for bail, therefore, he be enlarged on bail.

5 Mr. Palkar, learned APP, on the other hand, would submit that there is only statement of a child witness, namely, Shrirup Santosh Patil recorded on 24/09/2019 by the investigating officer which clearly

implicates the wife of the informant. Except that, according to learned APP, there is no other evidence so as to indicate the involvement of the applicant.

6 Perused the investigation papers. I have also gone through the postmortem report.

7 From the postmortem report it is clear that the cause of death was, "Subdural and intracerebral hemorrhage due to head injury".

8 I have also gone through the FIR wherein it is alleged that the wife of the informant had confessed before her husband that as the mother-in-law had seen her affair with applicant and had told that she would disclose this to informant, both of them i.e. wife and the applicant assaulted the deceased by means of wooden log and killed her. Needless to say, this is the extra-judicial confession given by wife to her own husband and the evidentiary value of the same will have to be assessed at the time of trial.

9 Then, there is statement of child witness, namely, Shrirup Santosh Patil, who is son of the informant and at the relevant time was 7 years

old. The answer to question No. 28 shows that on the day of incident his mother wake up in the night and by means of a stick assaulted grandmother. When he enquired his mother as to what had happened, she replied that nothing had happened and asked him to sleep. The answer to question No. 29 then shows that his mother then rang up her friend and told that something had happened to grandmother and that he/she should come.

10 This statement of the child witness doesn't in any manner indicate that at the time of incident the applicant was very much there and that he in any manner participated in the alleged offence. It is also not clear from his statement that after his mother rang up her friend, the applicant came. Suffice it to say the presence of applicant is nowhere attributed by this child witness at the time of incident.

11 Having regard to the material on record and in my considered opinion, applicant has made out a case for bail. Hence, the following order.

ORDER

(i) Applicant- Rupesh Kasturi Labyahol shall be released on bail in C.R. No. 236 of 2019 registered with Gadhinglaj Police Station, District-

Kolhapur on his executing P R. bond in the sum of Rs. 20,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Bail before the trial Court.

(v) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)