

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

CRIMINAL BAIL APPLICATION NO.726 OF 2020

Tukaram Vithoba Kute

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Veerdhawal Deshmukh i/b. Jaydeep D. Mane, Advocate for Applicant.
- Smt. J.S. Lohokare, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.80/2019 registered with Islampur Police Station, on 09/02/2019 under section 302 of the Indian Penal Code.

2. Heard Mr.Veerdhawal Deshmukh, learned counsel for the Applicant and Smt.J.S. Lohokare, learned APP for the State.

3. The prosecution case is that the deceased Renuka was the Applicant's second wife. They had got married on

16/02/2016. On 22/02/2016 they entered into an agreement wherein they had decided that the Applicant had to transfer one room, 5 acre land and half of his pension in favour of Renuka and he was to look after Renuka and her son Pradip. He did not comply with such promises and therefore there used to be frequent quarrels between the Applicant and his wife Renuka. On 08/02/2019, between 07.00 to 07.45 p.m. the Applicant committed Renuka's murder by assaulting her on her head with sickle.

4. The FIR was lodged by one Ajay Patil, who had broken open the lock of the room on 09/02/2019 at about 12.00 p.m. and had found Renuka murdered inside.
5. Learned counsel for the Applicant submitted that though, the first informant has stated in his statement that his grandfather had seen the Applicant going away at 07.45 p.m. on 08/02/2019 after putting a lock on the room, the grandfather of the first informant himself has not stated that the Applicant had

locked the room. He had merely seen the Applicant going away from that place. He submitted that this variance goes to the root of the matter. He further submitted that there is difference in story narrated by the different eyewitnesses. One of the witness namely Sampatrao Patil had mentioned that there was crowd at about 12.00 p.m. on 08/02/2019 outside the house of the Applicant, whereas the other witness Jaywant Suryawanshi stated that he had seen the crowd at about 06.00 p.m. on 08/02/2019. He submitted that this discrepancy also shows that the prosecution case is doubtful.

6. The learned counsel submitted that the Hon'ble Supreme Court in the case of Balkrishna Tukaram Angre, Vs. State of Maharashtra as reported in 2018 ALL MR (Cri.) 898 (SCC) had granted bail to the accused, against whom the prosecution case was based on circumstantial evidence.

7. Learned APP opposed this application. She submitted that besides the fact that there was no eyewitness, there is a

witness who had seen the Applicant going away from that room with bag in his hand. The victim was staying with the Applicant and therefore it was for the Applicant to explain the facts within his knowledge as per section 106 of the Evidence Act. She further submitted that there is recovery of sickle and blood stained clothes at his instance.

8. I have considered these submissions. With the assistance of the learned counsel, I have perused the entire charge-sheet.

9. The important witness in this case is one Anrao Patil. He had given that particular room on rent to the present Applicant. He has stated that there used to be frequent quarrels between the Applicant and the deceased and therefore this witness had asked them to vacate the room. On 08/02/2019 at about 07.00 p.m. the Applicant and the deceased had come together from some place. They had luggage in their hands. At around 07.00 p.m., this witness heard their quarrel and shouts.

He did not pay any attention because it was their every day affair. At about 07.45 p.m. the Applicant was seen going away from the room with a bag in his hand. He was in a hurry. On the next day this witness had seen lock to that room. This witness had seen the Applicant going away from the room alone. The deceased was not with him. Therefore he got suspicious and he told his grandson Ajay, the first informant, to break open the lock. After that the dead body was found.

10. The post-mortem notes shows that there was stab wound on the scalp of the deceased and the cause of the death was 'Intracranial hemorrhage with subdural heamorrhage'. This is a seriously incriminating circumstance against the present Applicant. There is considerable force in the submission of learned APP, that as per section 106 of the Evidence Act, it was within the special knowledge of the Applicant to explain as to what had happened, because the deceased was alone in the room with the Applicant. He had left the room hurriedly without offering any explanation to the witness i.e. the first informant's

father. Besides this, the circumstance of recovery of murder weapon and the blood stained clothes is another circumstance against the present Applicant. The argument that the witness Jaywant had seen crowd in the evening on 08/02/2019 has no substance, because the informant's grandfather and witness Sampatrao Patil had stated that the lock was broken open at 12.00 p.m. The witness Jaywant had returned from his work at 06.00 p.m. Therefore he was not aware as to what happened at 12.00 p.m. Considering this, there is strong material against the Applicant.

11. As far the judgment referred to by the learned counsel for the Applicant is concerned, that judgment will not be helpful to the Applicant in this particular case in view of the circumstances mentioned hereinabove. These circumstances form a complete chain. The application is therefore rejected.

(SARANG V. KOTWAL, J.)