

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

CRIMINAL BAIL APPLICATION NO. 1098 OF 2019

Sunil @ Bhairu D. More
Versus
State of Maharashtra

...Applicant

...Respondent

Mr. Ashok P. Mundargi, Senior Advocate i/by Jayant Bardeskar for the Applicant.

Mr.A.R.Patil, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 4th FEBRUARY, 2021

P.C. :

1. Heard learned Senior Counsel for the applicant and the learned A.P.P for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 23 of 2018 registered with the Karveer Police Station, Kolhapur, for the alleged offences punishable under Sections 302, 201, 386, 346, 120B and 34 of the Indian Penal Code.

3. Learned senior counsel for the applicant submits that the allegations as against the applicant are false and baseless. He submits that

the prosecution case rests on circumstantial evidence and that, the circumstances on record do not point to the complicity of the applicant in the alleged crime. He submits that the Sessions Court, Kolhapur has released similarly placed co-accused i.e. Sunil Shinde, Rashid Wajir and Rohit Kamble on bail.

4. Learned APP opposes the application.

5. Perused the papers. According to the prosecution, a dead body was found in a well on 01/02/2018 at about 8.30 a.m. The said dead body was tied to two cement poles. Pursuant thereto, a complaint/FIR was lodged as against unknown persons alleging the aforesaid offences. It appears that when the applicant and other accused (also accused in the present C.R.) were arrested in connection with another C.R. i.e. C.R. No.54 of 2018 registered with the Gokul Shirgaon Police Station for the alleged offences punishable under Section 302, 201 of the Indian Penal Code, during the course of investigation in the said C.R., one of the accused confessed that they had killed the deceased – Dastageer, pursuant to which, the applicant and other co-accused were arrested in the present C.R. Admittedly, the prosecution case rests on circumstantial evidence. A perusal of the statements of Sachin Patil and his wife - Bharti Patil show

that there was some monetary transaction between the said witness - Sachin and the applicant; that as the applicant was demanding an exorbitant interest i.e. more than the principal amount, there was a dispute between them; that the applicant would threaten their family; and that three years prior, the applicant had forcibly taken their house and put his lock on the house; pursuant to which, they moved into a small 'gotha' behind their house; that in order to repay the applicant and out of fear of being assaulted, Sachin took up a job in Pune; that Sachin would visit his house, every 15 days / 1 month; that three months prior, Sachin and Bharti had noticed that one person, aged 45 years was locked in their house; that the applicant had asked Bharti not to disclose the same to any person; and that the applicant would regularly come, give him food and leave. The said witnesses have identified the deceased as being the person who the applicant had locked in their house, on the basis of the photo shown by the Police. Apart from these witnesses, there are statements of witnesses who had last seen the applicant with deceased-Dastageer. The statements of Vishal Chaugule, Krishnakant Chougule, Malti Chougule i.e. all relatives of the applicant reveal that on 18/01/2018 at about 3.00 p.m., the applicant had gone to their house alongwith 2-3 persons and that the applicant had introduced the said persons, as Dastageer (deceased) and Javed (co-accused). The said witnesses have stated that after having tea, all the said

persons left their house. Deceased was thus last seen with the applicant on 18/01/2018.

6. The statements of the deceased's wife Bebijaan and her son Abbas reveal the motive for the applicant to kill the deceased. Bebijaan, in her statement has stated that her husband – Dastageer was working for about four years in Hyderabad and that he would come to Kolhapur to meet them often. She has stated that in the last one and a half year, Dastageer had not come to meet them, however, was in touch with them on phone regularly. She has further stated that three years prior, the applicant and two accused i.e. Sunil Shinde and another would visit their house and demand money. She has stated that the said persons told her that Dastageer had transferred their house in the applicant's name. She has further stated that even previously, the applicant and others had assaulted her husband on account of monetary transactions and had forced her husband-Dastageer to transfer his house in their name. She has stated that pursuant thereto, she had lodged a Police complaint with the Gokul Shirgaon Police Station, Kolhapur in December, 2016 as against the applicant and others.

7. No doubt, the prosecution case rests on the circumstantial evidence, however, prima facie, the circumstances on record point to his

complicity. The possibility of the applicant again committing the same offence, cannot be ruled out. The possibility of the applicant tampering with the prosecution witnesses / intimidating them also cannot be ruled out. There is a similar case registered as against the applicant i.e. under Section 302 of the Indian Penal Code with the Gokul Shirgaon Police Station.

8. Considering the aforesaid, this is not a fit case to enlarge the applicant on bail. Hence, the application is rejected.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.