

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

CRIMINAL BAIL APPLICATION NO.942 OF 2021

Sunil Iranna Sutar

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Priyal G. Sarda, Advocate for Applicant.
- Ms.A. A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th MARCH, 2021

P.C. :

1. Leave to amend is granted. Amendment to be carried out forthwith.
2. The Applicant is seeking his release on bail in connection with C.R.No.126/2019 registered with Kamti Police Station, Solapur, under sections 302, 201, 107, 120(B) of the Indian Penal Code. The Applicant was arrested on 19/02/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. The prosecution case is that the deceased Anansaheb Ghodke was son of accused No.5 Malan. The accused No.1 Vitthal was her brother. Accused No.6 Shobha was her sister. All of them hatched conspiracy to commit murder of Annasaheb because he was troubling accused No.5 continuously after consuming liquor and used to abuse her. The accused No.1 in collusion with accused Nos.2, 3 and 4 including the present Applicant took the deceased to one hotel and then took him to a secluded spot and committed his murder using heavy stone.
4. The FIR was lodged by widow of the deceased on 02/07/2019. She has stated that on 01/07/2019, the informant was not in her house in the evening. When she returned at 09.00 p.m., her husband was not in the house. She asked accused No.5 about his whereabouts. At that time, accused No.5 Malan told that in the evening at about 06.15 p.m. one unknown person had come to their house. The deceased and that unknown person had left the house together. On the next day, the deceased was found dead on the road near agricultural land of one Mane. On this basis, FIR is lodged.

5. Heard Mr.Priyal G. Sarda, learned counsel for the Applicant and Ms.A. A. Takalkar, learned APP for the State.
6. Learned counsel for the Applicant submitted that there is absolutely no incriminating circumstance against the present Applicant. The prosecution case at the best is that, the accused Nos.1 to 4 were together at Rajmudra Hotel in the evening at about 06.00 p.m. Learned counsel for the Applicant submitted that evidence in respect of the accused going to Samadhan Dhaba is not incriminating against the present application because the employees of Samadhan Dhaba have not identified the present Applicant. As far as visit to Rajmudra Hotel is concerned. It is not incriminating because at that time, deceased was not there. There is no other incriminating circumstance in the nature of recovery etc. Motive is not attributed to him.
7. Learned APP opposed this application. He submitted that, the fact that the Applicant had accompanied other accused at Rajmudra hotel in the evening cannot be disputed because he

is identified by the waiter in the test identification parade. The offence is serious and the bail should not be granted. The Applicant is seen in the CCTV footage at Rajmudra hotel.

8. I have considered these submissions. With the assistance of learned counsel for the Applicant, I have perused the charge-sheet. In the charge-sheet the parade is included. It was held on 06/03/2020. In that parade Budan Shaikh has identified the present Applicant. This Budan Shaikh was working in Rajmudra Hotel. This is the only alleged incriminating circumstance against the present Applicant. So far as the Applicant's visit to Samadhan Hotel with other accused and the deceased is concerned, there is no connecting piece of evidence in the nature of identification of the present Applicant. The employees of Samadhan Dhabha were not knowing either the deceased or the accused and therefore the identification parade is important, but the witness Suraj Patil, who was working at Samadhan Dhaba, did not identify the Applicant. Therefore there is nothing to connect the Applicant to the visit of

Samadhan Dhaba before the offence was committed. The prosecution case is that accused Nos.1 to 4 met at around 06.00 p.m. at Rajmudra Hotel. These accused then went to Samadhan Dhaba at around 09.00 p.m. with the deceased. Then deceased was taken to a secluded spot where murder was committed. Therefore for theory of 'last seen together' Samadhan Dhaba is important. There is no other piece of evidence. Post-mortem notes show that the deceased had died due to 'cerebral haemorrhage due to head injury'. There were about four external injuries all over the body, including the head injury. The prosecution case is that he was assaulted with stone. However, there is no incriminating piece of evidence showing the Applicant's complicity. Therefore he deserves to be released on bail.

9. Before parting with this order, it is necessary to comment on the nature of investigation seen in many cases these days. In many of the charge-sheets, it is observed that statements of witnesses are recorded about what they had seen.

These statements are obviously important. But again their supplementary statements are recorded, where they have nothing else to add. Those supplementary statements are about police explaining them all the details of the investigation. Recording of this kind of supplementary statements serves no purpose. It does not take investigation or prosecution case any further. They are totally irrelevant. Unnecessarily too much energy, efforts and papers are wasted in recording such supplementary statements. Superior officers need to guide the Investigating Officers how to avoid recording of such worthless supplementary statements and making them part of the charge-sheet.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No.126/2019 registered with Kamti Police Station, Solapur, the Applicant is directed to be released on bail on his furnishing PR bond

in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)