

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1666 of 2021

1) Vitthal Manohar Birajdar
2) Rajkumar Pundalik Birajdar .. Applicants
Versus
The State of Maharashtra .. Respondent

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Mr. Ritesh Thobde for the applicants.
Mr. Ajay Patil, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 13th JULY 2021

P.C:-

1 The applicants along with four other accused persons are arraigned as accused in C.R.No. 126 of 2019 registered with Kamati police station, District Solapur, for the offence punishable under Sections 302, 201, 107, 120B read with Section 34 of the IPC.

2 The deceased is one Annasaheb Ghodake and the informant is his wife Anita. Anita lodged a complaint alleging that on 1st July 2019, some unknown persons had murdered her husband by hitting him with stone and had thrown his dead body on the side of the road for the purpose of destroying the evidence. In her complaint, she allege that her husband had left for his work

in the morning hours and when he did not return till 9 O'clock in the night, she was informed by mother-in-law (Accused no.5) that one person had been to their house and her husband accompanied the said person. The body of the complainant's husband was found on the next day i.e. 2nd July 2019, pursuant to which the complaint is lodged. Her supplementary statement came to be recorded on 27th July 2019, wherein she allege that her sister-in-law Shobha and mother-in-law Malan were fed up with the addiction of her husband as he used to indulge frequently with them after consuming liquor and she allege that the two along with Accused no.1 Vitthal, who was the cousin brother of her husband eliminated the deceased by inviting him for a party and by plying him in a white colour Omni car, they took him to Samadhan Dhaba where he was offered food and liquor and thereafter, they killed him by hitting with a stone.

3 During investigation, the spot panchnama was drawn and the body of the deceased was forwarded for postmortem. Column No.17 of the report record 'abrasion and contusion along with a CLW on right temporal parietal region 3 x 1 c.m coupled with a fracture. Column no.19 record Haematoma over parietal and temporal area. The time of death is recorded 1 ½ hours to 2 ½ hours after last meal. Probable cause of death is ascertained as 'shock due to cerebral hemorrhage due to head injury'.

Statement of witnesses came to be recorded and compiled in the charge-sheet. One Suraj Patil, who was on duty in Samadhan Hotel on 1st July 2019 from 1'O clock in the afternoon state that at 8.30 p.m, one white colour Omni car came to the hotel and five persons from the said car entered the hotel for the purpose of having food. He gave description of the said persons and state that after having dinner coupled with drinks, they left the hotel by Omni car at around 11.00 pm and proceeded towards Solapur Road. After some time, they returned back as they had left the mobile phone charging in the hotel. On the next day, when he gained knowledge that dead body of one person was found at a distance of 1 ½ km from the hotel at Solapur to Mangalveda road, when he proceeded to the spot and identified the dead person to be one of the five persons who had visited his hotel the previous night and to whom he had served dinner. The supplementary statement is also recorded where he divulge the names of the persons who had visited his hotel on 1st July 2019.

Statement of another waiter of Samadhan Hotel by name Samadhan Kamble is also compiled in the charge-sheet. The charge-sheet also include statement of one Ritesh Ghodke, cousin brother of the deceased who was residing in the house adjacent to that of the and the complainant. He state that the deceased was serving in the Water Conservation Department and he was transferred from Solapur to Pune but he returned back to

the village Kurur and did not report back to duty. He was addicted to liquor and was in the habit of engaging in quarrel with his mother – accused no.5 and sister Accused no.6. Ritesh state that at 8.15 p.m, the deceased spoke to him from one mobile number and invited him to join for dinner in Samadhan Dhaba, Kamti, where the party was going on. When he inquired from him about who were the other persons present, the deceased gave the name of his cousin brother Vitthal (applicant no.1). Assuring the deceased that he would make an attempt to reach there, he switched off the phone. He also received a phone call from accused no.6 – Shobha inquiring from him whether he had received phone call from the deceased. He responded by stating that he had received the call from deceased that he was present in a party at Samadhan Dhaba along with Vitthal.

4 The said witness had given telephone number from which he received a call being Mobile No. 772199059. During investigation, the details of the said mobile phone were procured from the service provider Bharati Airtel Limited and the said number from which Ritesh received the call is in the name of Vitthal Manohar Birajdas (applicant no.1). Phone call was made from the said number on the mobile phone of Ritesh, on 8888496935 at 20.58.58. The said duration is 1.33 seconds.

5 The said telephone call is an incriminating factor against the present applicant no.1 as Ritesh has stated that the deceased spoke to Ritesh from the said mobile number and invited him to join for dinner at Samadhan Dhaba where he was present with the applicants. Since the narration of Ritesh is corroborated by the details of the CDR collected during the course of investigation, the charge-sheet allege that the deceased was in company of the applicant no.1 and based on the last seen theory, implicate him in the charge of murder. The charge-sheet also contain CCTV footage where the Omni car is going towards Akkalkot at 23.39 hours. The prosecution rest its case against the applicant no.1 based on circumstantial evidence, and incriminating circumstances against the applicant no.1 reveal that he was in the company of the deceased on the night when he was done to death. The burden is upon him to show how and when he parted company with the deceased before he was done to death. This opportunity can be availed by the applicant at the time of trial. The applicant no.1 is not entitled to claim any parity that the co-accused Shobha, brother of the deceased and one Shrikant, a co-accused who have been released on bail by this Court as the material against the applicant incriminate him in the crime.

6 Application, qua applicant no.1 stands rejected.

7 As far as the applicant no.2 is concerned, the charge-sheet *prima facie* do not contain any incriminating material and since no Test Identification Parade has been conducted, the presence of the applicant no.2 in the hotel in the company of the deceased is not established. That it the precise reason why co-accused Shrikant @ Shiru @ Dadya is released on bail on 9th September 2020 by this Court. The applicant no.2 is therefore, entitled for parity and is released on the following terms.

ORDER

- (a) The Applicant no.2 – Rajkumar Pundalik Birajdar in connection with C.R.No.126/2019 registered with Kamati Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.20,000/- with one or two sureties of the like amount.
- (b) The applicant no.2 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (d) The Applicant shall attend the police station on every 1st Thursday of the month between 11.00 am to 1.00 pm.

8 The observations made hereinabove are prima facie in nature and limited to the extent of disposal of the present application.

9 The Application is allowed in the aforesaid terms.

SMT. BHARATI DANGRE, J