

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2070 OF 2021

Prabhuling Ogyappa Pujari .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Kuldeep Nikam for the Applicant.

Mr.S.H.Yadav, APP for the State.

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CORAM: BHARATI DANGRE, J.

DATED : JULY 27, 2021

P.C:-

1. The applicant, who has been arrested on 04/12/2019 seeks his release on bail in C.R.No.221 of 2019 registered with Umdi Police Station, thereby invoking Sections 302, 363, 364-A, 201 read with Section 34 of the IPC.

2. Heard learned counsel Mr.Nikam appearing for the applicant and learned APP Mr.Yadav appearing for the State. According to Mr.Nikam, the case of the prosecution is entirely based on the circumstantial evidence and the only one circumstance which is relied upon is the last seen theory, which has been projected through one Tatya Annu Bhosale.

3. The deceased, who was resident of village Kusur, had his agricultural field situated in Jalihal Budruk, Taluka Jat, District Sangli. On 27/11/2019, the deceased left for the

agricultural work in the morning from his residence at Kusur, but did not return and halted at his mother's place at Jalihal. On 28/11/2019, he informed the complainant Bhagirathi that he will return to Kusur by evening, but since he did not return till Sunday and his mobile phone was found switched off, she alongwith other members of her family went in search of her husband Mahadeo. On 01/12/2019, she was informed by Tatya Bhosale, resident of Jalihal that on 28/11/2019 at around 5.30 p.m., he had seen Mahadeo riding on the motorcycle with the present applicant and one Silsiddha, his cousin brother. This information was supplied by him to the complainant when she inquired about his whereabouts.

This is the only statement in the charge-sheet, which implicate the present applicant, who is a young boy aged 23 years. The applicant is resident of village Jalihal and is the nephew of deceased Mahadeo who share the same precinct, since his mother was also occupying the house in the neighbourhood. The families are in relation and what is projected by the prosecution is some dispute about the property.

4. One charge-sheet in C.R.No.9 of 2013 is included in the charge-sheet where the deceased was the complainant and accused No.1 and his father Bhutali Kulappa Pujari were arraigned as accused persons and Sections 324, 504 and 506 read with Section 34 of the IPC have been invoked. Admittedly the present applicant is not an accused in the said C.R.

5. The postmortem report reflects three injuries in column No.17 and the cause of death has been opined to be the head injury. The body of the deceased was found in the well in village Jalihal.

6. It is settled position of law that in a case based on circumstantial evidence, the prosecution will have to establish the chain of circumstance so closely linked to each other that it would lead to a conclusive inference that it is only the accused person, who has committed the offence and there is no possibility of any person other than the accused committing the said offence.

On appreciation of the material contained in the charge-sheet, the last seen theory is the only one circumstance, but the entire link connecting the applicant to the offence is missing. Merely the applicant is the nephew of the deceased and the deceased being seen in the company of the applicant, cannot be taken to be a conclusive circumstance pointing out the guilt of the applicant. The prosecution will have to establish something more to complete the chain of circumstances, linking the applicant to the death of Mahadeo. *Prima facie*, at this stage, since the charge-sheet does not contain any other material than the last seen theory, the applicant cannot be made to languish in jail, when even charge is not framed. The applicant is in jail since 2019. Since the case is based on the circumstantial evidence, in my considered opinion, the applicant is entitled to be released on bail, subject to the following stipulations.

: ORDER :

- (a) The Application is allowed.
- (b) Applicant – Prabhuling Ogyappa Pujari shall be released on bail in C.R.No.221 of 2019 registered with Umdi Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant 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 and shall not tamper with the prosecution evidence.

(SMT. BHARATI DANGRE, J.)