

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3109 OF 2019

Pratik Bhauso Gurav

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Ganesh Gole with Mr.Ateet Shirodkar for the applicant.

Mr.S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 17th MARCH 2021

P.C:-

1 The Applicant seek his release on bail being charge-sheeted for an offence punishable under Section 302 read with Section 34 of the IPC in C.R.No. 38 of 2019 registered at Hatkanangale Police Station, Kolhapur. The applicant is arraigned as accused no.2 in the said C.R along with one other co-accused. He was arrested on 20th January 2019 pursuant to the FIR being registered on 18th January 2019.

2 Learned counsel Mr.Gole appearing for the applicant has taken me through the charge-sheet and in support of the case of the applicant for his release on bail, he submit that there is no incriminating material against him, but merely on the basis that the applicant was spotted as a suspect on the basis of some secret information received, he has been transformed into an accused

Tilak

and is charge-sheeted. In absence of any concrete material connecting him to the crime in question, learned counsel Shri Gole submit that the applicant deserves to be released on bail.

2 With the assistance of Mr.Gole and the learned APP, I have perused the material placed on record as compiled in the charge-sheet. The FIR is lodged by the brother of the deceased and in the said complaint, he has referred to certain anterior events in respect of the deceased Ashok in particular about his business rivalry. He state that deceased had left his house for his work place on 17th January 2019 but did not return and therefore, a missing complaint came to be lodged with Hatkanangale Police Station. In the backdrop, the rivalry was cited, as suspicion being expressed by the complainant on the deceased going missing. On the next date, i.e. 18th January 2019, the body of the deceased was found near his motorcycle on the road between Tardal to Hatkanangale. The deceased was found to be murdered by sharp weapons.

3 On the investigating machinery set into motion, the Assistant Police Inspector from Ichalkaranji reported to the PI, Hatkanangale Police Station on 20th January 2019 about two persons being positioned under a tree along with a motorbike in suspicious circumstances. Since their behaviour and movements were found to be dubious, the police party encircled them and

when inquiries were made, one of the person was found to be the present applicant along with co-accused. A sort of confession in form of extra-judicial confession was recorded and that form the basis of arrest of the present applicant along with co-accused. The said document form part of the charge-sheet and is placed on record.

It is this material which is relied upon by the prosecution, identifying the present applicant to be one of the suspect in commission of the offence i.e. the murder of the deceased Ashok. Tipped on this suspicion, the Investigating Agency proceeded further and collected material before converting the suspect to 'Accused'. This material include a memorandum of panchnama executed under Section 27 of the Indian Evidence Act on 26th January 2019 and according to the charge-sheet, the applicant led to the discovery of the place where he had discarded the ATM card as well as other documents from the wallet which belonged to the deceased and he led to the said spot from where the ATM card as well as the PAN card and the licence of the deceased were recovered. The articles belonging to the deceased was considered to be an incriminating circumstance against the present applicant, by applying the principle under Section 27 of the Evidence Act.

4 *Prima facie*, this material do not lead to conclusive complacency of the applicant in the crime as ultimately, it will be

a matter of evidence in the trial where the veracity of this piece of evidence will have to be corroborated with other circumstantial evidence which would be placed on record by the prosecution. The discovery leading to the spot and the recovery of the belongings of the deceased are from an open place and therefore, the law as regards the said position being crystal clear to the effect that there are chances and likelihood of the place being accessed by the general public, cannot be ruled out, and therefore, this factor as the only factor, cannot be considered against the applicant to be sufficient to bring home his guilt in the said crime. Apart from this, the learned APP also submit that there was some information received and that is also compiled in form of statement in the charge-sheet, that is, from the Crime Branch, Kolhapur and this forms the basis of the evidence against the applicant which, of course, is the circumstantial piece of evidence since no direct evidence is available.

5 Prima facie, on perusal of the material colated in the charge-sheet, it falls short of inference of implication of the present applicant in a crime of murder coupled with Section 201 of the IPC at this stage. In such circumstances, the applicant, in my considered opinion, who has been arrested since 20th January 2019, and on completion of investigation, the charge-sheet being already instituted, deserves to be released on bail subject to the stipulation that he will co-operate with the trial and will not take

advantage of his liberty by interfering with the prosecution evidence.

Needless to state that the observations made are prima facie in nature and restricted for the purpose of consideration of the application for grant of bail and particularly the trial Court shall not be influenced by the said observations which serve a limited purpose. Hence, the following order :-

ORDER

- (a) The Applicant – Pratik Bhauso Gurav - shall be released on bail in connection with C.R.No.38 of 2019 on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) He 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.
- (c) The applicant shall mark his attendance in the trial Court once a month unless and until exempted by the Court.

6 The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J