

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

CRIMINAL BAIL APPLICATION NO.90 OF 2020

Rizwanali Roshanali Shaikh Applicant

versus

State of Maharashtra Respondent

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- Ms.Anjali Awasthi, Advocate for Applicant.
- Smt.M.R. Tidke, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking release on bail in connection with C.R.No.18/2019 registered with Shahapur Police Station, on 17/01/2019, Thane, under sections 302 r/w 34 of the Indian Penal Code. The Applicant was arrested on 18/01/2019 and since then he is in custody.

2. Heard Ms.Anjali Awasthi, learned counsel for the Applicant and Smt.M.R. Tidke, learned APP for the State.

3. The prosecution case is that the deceased Anujkumar Pandey was a driver on trailer bearing No.MH-43-U-5958. He was taking his trailer from Mumbai to Nashik. When it was parked near Kinavli bridge, the present Applicant and the other accused Rahul assaulted him with a wheel spanner on his head and committed his murder. The FIR was lodged by Pravinkumar Dwivedi, who was brother-in-law of the deceased Anujkumar. He has given background of Anujkumar's employment. He has stated that the present Applicant was working as a cleaner with the deceased. The FIR mentions that there was some dispute between Anujkumar and one Guru in respect of the some ornaments. Guru was demanding Rs.50,000/- from the deceased. On 16/01/2019, at about midnight, he was informed telephonically by his acquaintance Vinod Singh that Anujkumar had met with an accident near Kinavali bridge. The Applicant was not found at the spot. Therefore in the midnight itself, the first informant went to the spot. When he reached there, he was informed that the deceased was taken to government hospital at

Shahapur. When he went there, he came to know that Anujkumar had succumbed to his injuries.

4. Learned counsel for the Applicant submitted that the case is based on circumstantial evidence and there is no direct evidence against the present Applicant. Nobody had seen the Applicant with the deceased any time prior to the actual incident of assault. She submitted that recovery of wheel spanner at the instance of Applicant and seizure of blood stained clothes are not incriminating because the C.A. report is not on record. The Applicant is a young boy and was 19 years of age at the time of incident. The co-accused was below 18 years of age and he is already released on bail. She submitted that therefore the Applicant can also be released on bail.

5. Learned APP opposed this application. She submitted that there is a statement of the transporter, who had called the deceased at about 05.15 p.m. on 15/01/2019 and at that time, the deceased had told him that he was crossing Padgha and that

the Applicant and the other accused Rahul were with him. She submitted that this statement is admissible and it shows that the Applicant and the co-accused were with the deceased and therefore they are the only persons who could have committed this offence.

6. I have considered these submissions. With assistance of both learned counsel I have perused the charge-sheet. The post-mortem notes show that the deceased had suffered two injuries on the head and two contusions on the legs. The cause of death was mentioned as “death due to head injury”.

7. The prosecution has not clearly alleged any particular motive behind this offence. It is not their case in the charge-sheet based on admissible material, that it was committed for some monetary benefits. The first informant had expressed his suspicion against another person. Therefore in this case, the motive is not really alleged in clear terms.

8. As pointed out by learned APP, the most important circumstance is the statement of one Jungbahadur Sampat Yadav. He has stated that he was in the transport business and he was using the trailer on which the deceased was employed as a driver. That trailer was owned by one Obidulla Abdullavadut Shaikh. This witness Jungbahadur has stated that he was paying the deceased per month and he was also paying the Applicant per month as the Applicant was working as cleaner on the same trailer. On 15/01/2019, the deceased had unloaded iron rods at J.N.P.T. Uran. This witness had instructed the deceased to go to Nashik for loading it again as mentioned earlier. His statement shows that he had telephonic conversation with the deceased on 15/01/2019 at 05.15 p.m. and at that time the deceased had allegedly told this witness that the Applicant and his friend Rahul were with him. He further stated that, on 16/01/2019, he was trying to contact the deceased throughout the day. But he could not be contacted. At about 11.00 p.m. he was informed by the owner of the trailer Obidulla about finding of the trailer and the dead body of the deceased inside it. This means that at the

highest the admissible portion of the statement mentioned by the deceased himself to this witness shows that the Applicant could be with the deceased at 05.15 p.m. on 15/01/2019. The dead body was discovered much later at a distant place. Therefore even this becomes a weak piece of evidence. This is not a circumstance which can be strictly described as 'last seen with the deceased theory'. Nonetheless, it may be an admissible piece of evidence because, the statement was made by the deceased in connection with his travel though at that time, he may not be under the apprehension of death. However, even otherwise this is a weak piece of evidence. The dead body was recovered much later at some distance from Padgha. From the charge-sheet it appears that it was this circumstance that the prosecution case is based on.

9. The circumstances of recovery of blood stained clothes and wheel spanner at his instance, cannot themselves be incriminating circumstances in absence of any C.A. report in that behalf. Till today no C.A. report is produced before this Court.

Therefore at this stage, those circumstances cannot be taken into consideration. Taking overall view of the matter, it appears to be a case of circumstantial evidence. The Applicant is a young boy and is in custody since 18/01/2019. Therefore I am inclined to grant bail to the present Applicant.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No.18/2019 registered with Shahapur Police Station, 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) The Applicant shall attend the concerned police station once in a month till framing of the charge.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)