

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

CRIMINAL BAIL APPLICATION NO. 115 OF 2020

Shrinivas @ Sinu Ganji S/o

Lingayya Ganji

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Sayaji Nangre i/b Samer P. Nangre, for the applicant.

Mr. Ameet A. Palkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JULY, 2021

(Through Video Conferencing)

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 301 of 2019 dated 23/07/2019 registered at Oshiwara Police Station, Mumbai, under section 302 of the Indian Penal Code and under Section 3 and 25 of the Indian Arms Act. The applicant was arrested on 23/07/2019 and since then he is in custody.

2. Heard Mr. Sayaji Nangre, learned counsel for the applicant and Mr. Ameet A. Palkar, learned APP for the State.

3. The applicant was arrested on 23/07/2019 and since then he is in custody. This is a very sad case in which the applicant is arrested on the allegations of commission of murder of his son Vicky. The FIR was lodged by the applicant's other son Rocky Ganji. He has stated that he was residing with his father, i.e. the applicant and his brother deceased Vicky. The informant's mother Natty i.e. the applicant's wife was residing separately at Santacruz. The applicant was a driver and Vicky was not doing any work. On 22/07/2019, when the informant had returned home from his job at about 9.30 p.m., he saw police and his neighbours outside his house. He came to know that between 8.50 p.m. to 9.20 p.m., somebody had fired at Vicky. Vicky had sustained bullet injury on left side of his chest. He was taken to the hospital but he was declared dead. On these allegations the FIR is lodged. The prosecution case appears to be that because of some quarrel, the applicant fired at his son Vicky causing his

death.

4. Learned Counsel for the applicant submitted that it is a case purely based on circumstantial evidence. There are no eye witnesses. There is no serious motive against the present applicant. He submitted that recovery of pistol and four live magazines at the instance of the present applicant is extremely doubtful. He submitted that there is one more circumstance in the form of extra judicial confessional statement to his wife Natty made telephonically. He submitted that such circumstance cannot be used against the present applicant because she was holding grudge against the present applicant as they were residing separately. He submitted that there are statements of watchmen of the building which indicate that the applicant was present throughout with them at that particular time. After hearing some big noise of firing they had tried to find the source. He submitted that, therefore, sufficient doubt is created about the prosecution case and the applicant deserves to be released on bail.

5. Learned APP opposed this application and submitted that the circumstance of extra judicial confession is an important piece of evidence. The applicant's wife had no reason to implicate him falsely. He submitted that the history of the relationship shows that the applicant was not having cordial relations with his family including the deceased. He submitted that pistol with live magazines was recovered at the instance of the applicant.

6. I have considered these submissions and with the assistance of both learned Counsel, I have perused the charge-sheet. Apart from the FIR, the informant had given his supplementary statement on 26/08/2019, in which he has stated that the applicant was having an extra marital relationship with another lady. The deceased had left his job. He was addicted to drug. But since past one year he had got over his addiction. There used to be frequent arguments between the applicant and the deceased. On 22/07/2019, the applicant had returned from Surat in the morning and this incident had taken place in the night.

7. Statement of the applicant's wife Natty was recorded on 23/07/2019, itself. There is another statement given by her on 27/07/2019. In both these statements she had mentioned about their strained relations. In her statement dated 23/07/2019, she had mentioned that the deceased Vicky had told her that the applicant had told Vicky that the applicant would commit murder of this witness Natty. Vicky had told this witness to be careful. In the same statement it is mentioned that the applicant had called her telephonically and had told her that Vicky was fired at. A careful reading of this statement does not mention that the applicant had told her that he had made any extra judicial confessional statement about he himself firing at Vicky.

8. Her statement dated 27/07/2019 clarifies this position. In that statement, wherein she has mentioned that the applicant had told her that he was sitting with his friends near gate of the building and that time he heard big noise purportedly of the gunshot firing. Then he went to his flat and saw that Vicky was lying on the floor. Her main grievance was that the applicant had

not taken Vicky to hospital immediately. The applicant had told her that other people had told him that it was a police case and he could not remove Vicky to hospital. It does not appear that applicant had made any extra judicial confession.

9. From the above narration, motive attributed to the present applicant is also not very clear. There was no sufficient reason for the applicant to have committed murder of his own son. The relationship of the applicant with other lady was going on and he was separated from his wife. The deceased and his brother were aware of it.

10. The other circumstance of recovery of pistol is also doubtful. The prosecution case is that the applicant had given a statement on 23/07/2019 showing his willingness to point out the place where the pistol was kept. He led the police to scooter. The applicant himself had removed key of the dicky from his pant pocket and had opened the dicky. From the dicky, pistol and four live cartridges were recovered. This panchnama was

conducted from 9.10 p.m. to 11.35 p.m. on 23/07/2019. Significantly, applicant's clothes were seized vide another panchnama dated 25/07/2019 carried out between 6.45 p.m. to 7.50 p.m. All throughout the applicant was wearing the same clothes. It is not very clear as to whether, when the applicant was arrested, his person was searched and whether key of that scooter was found at that time. Therefore, this circumstance is doubtful. In any case, there is no connecting ballistic expert's report showing that it was the murder weapon matching with bullet hitting the deceased. There is no reference to finding of the fatal bullet in the charge-sheet.

11. The post mortem report shows that the death was caused due to haemorrhage and shock due to firearm injury. The charge-sheet does not indicate as to what happened to the bullet which had caused the death.

12. In this background, statements of two watchmen are very important. They are Aniket Kasale and Sunil Gajbhiye.

Aniket has stated that he was chit- chatting with other watchmen including Sunil and others. At that time, the applicant was with them. He heard big noise between 8.50 p.m. to 9.00 p.m. Sunil had gone to see what had happened. At that time, this witness Aniket, Deepak and present applicant were sitting at the same place near the building. Similar is the statement of other witness Sunil Gajbhiye. He has also stated that when he heard the noise, the applicant was with him. However, he has given time of the incident between 7.00 p.m. to 7.30 p.m. In any case, the statements of both these witnesses support the applicant's case.

13. In this view of the matter, sufficient doubt is created about the prosecution case. Therefore, the applicant deserves to be released on bail. It is made clear that these observations are made only for passing of the order of this bail application.

14. Hence the following order.

ORDER

(i) In connection with C.R. No. 301 of 2019,

registered with Oshiwara Police Station, Mumbai, 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 application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)