

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

CRIMINAL BAIL APPLICATION NO. 356 OF 2021

Kailas Jethu Phasale Applicant

Versus

The State of Maharashtra Respondent

Mr. Rameshwar Gite, for the applicant.
Smt. J.S. Lohokare, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 23rd MARCH, 2021**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. I-77 of 2020 registered at Ghoti Police Station, Nashik, on 13/6/2020 under sections 302, 506, 201, 120B read with Section 34 of the Indian Penal Code. The applicant was arrested on 14/6/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Rameshwar Gite, learned counsel for the applicant and Smt. J.S. Lohokare, learned APP for the State.

3. The prosecution case is that the accused no.1 Changuna's daughter was to get married with the present applicant. But her daughter had affair with the deceased Pandit Khadke. This relationship was not acceptable to Changuna. Therefore, she conspired with the present applicant and three others and committed murder of the deceased. According to their plan, on 26/05/2020, in the evening accused nos. 2 and 3 brought the deceased to a secluded spot in jungle. He was made to drink liquor. After that accused Nos. 2, 3 and 5 committed his murder by throttling him. After that they threw away his body in deep woods.

4. The FIR was lodged on 13/06/2020 when the dead body was discovered. It was in a highly decomposed state. The FIR was lodged by Police Constable Suhas Gosavi attached to Ghoti Police Station.

5. Learned Counsel for the applicant submitted that there is no specific piece of admissible evidence against the present

applicant. The prosecution story is developed only on the statements made by co-accused under section 27 of the Evidence Act.

6. Learned APP could not controvert this position but she submitted that there is motive to commit murder of the deceased against the present applicant.

7. I have considered these submissions. With the assistance of learned Counsel, I have perused the entire charge-sheet. The post mortem notes do not show any cause of death because the dead body was highly decomposed.

8. The only documents referring to the present applicant's name are some recovery panchnamas. On 16/6/2020 a motor cycle was produced by the present applicant. The investigation papers do not show any connection of this motor cycle with alleged commission of offence. There are no eye witnesses who have seen the applicant using this motor cycle when the offence

was committed.

9. A common statement was given by the accused No. 2 as well as the present applicant that they were willing to show the place where the offence was committed. This statement was recorded on 18/6/2020. Pursuant to this statement, the place was shown to the police and some bones were found but by that time the dead body was already discovered on 11/6/2020. Therefore, pursuant to these statements no new facts were discovered. It was a common statement by two accused. Therefore, it is doubtful whether this statement can be used against the present applicant.

10. Apart from these statements there is statement of co-accused Raju Thombare recorded on 14/6/2020. However, the portion mentioning the applicant's role in his statement is inadmissible. Thus there is no admissible evidence showing involvement of the present applicant. Therefore, he can be granted bail.

11. Hence the following order.

ORDER

- (i) In connection with C.R. No.I-77 of 2020 registered with Ghoti Police Station, Nashik, 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.)