

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

CRIMINAL BAIL APPLICATION NO. 483 OF 2021

Sunil @ Dongrya Hanumant Rathod	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Shailesh Kharat, for the applicant.
Mr. S.H. Yadav, APP for the State/Respondent.

**CORAM :SARANG V. KOTWAL, J.
DATE :24th MARCH, 2021**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. I-179 of 2016 registered at Pimpri Police Station, Pune, under sections 364, 302, 201, 120-B read with Section 34 of the Indian Penal Code. The applicant was arrested on 26/3/2016 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Shailesh Kharat learned counsel for the applicant and Mr. S.H. Yadav, learned APP for the State.

3. The prosecution case is that the accused No. 1 Akash Kharade's wife accused No. 3 Seema Kharade had a brother named Rajesh Jadhav. Akash Magar had committed his murder. When he was released on bail, he used to harass the accused No. 3 Seema. Therefore, accused No. 1 Akash Kharade and accused No. 3 Seema decided to eliminate Akash Magar. For that the present applicant helped them.

4. It is the prosecution case that, on the date of the incident i.e. on 26/7/2015 they called the deceased on some pretext and made him consume liquor. He was taken to a secluded spot on Alandi Chakan Road near a bridge on Indrayani river. The applicant followed other accused and the deceased. At about 2.00 p.m., behind a temple in a secluded spot, the applicant and accused no. 1 gave blows with axe and stone and thus committed his murder.

5. Learned Counsel for the applicant submitted that in the entire charge-sheet there is no admissible piece of evidence

against the present applicant. The prosecution case is based only on the alleged confession made by accused No. 1 before the police when he was apprehended by the police. He submitted that such statement is inadmissible. Besides that there is recovery of axe at the instance of present applicant but that is not incriminating because it is not connected with the offence.

6. Learned APP opposed this application. He relied on the FIR and other statements of police officers who have stated about confession given by the main accused Akash Kharade.

7. I have considered these submissions and with the assistance of learned Counsel I have perused the charge-sheet. The charge-sheet contains mainly the statements of first informant Police Constable Santosh Pagar and other police officers who have identically stated that they were investigating complaint about missing of the deceased Akash Magar. They had received a secret information and based on that information they apprehended accused no. 1 Akash Kharade and the present applicant. They

were separately interrogated and that time accused no. 1 Akash Kharade told them the details of how the murder was committed.

8. The post mortem notes show that the dead body was in highly decomposed state. Cause of death was not found. Remains of dead body were found pursuant to the statement given by co-accused Akash Kharade. The statements of police officers mentioning confession of co accused are hit by section 25 of the Evidence Act and those cannot be used against the present applicant. The recovery of axe is also of no assistance to the prosecution case. In the statement given by the present applicant the place where he had concealed the weapon was not mentioned. It was found from his house. There is no connecting piece of evidence between this axe and cause of death.

9. The co accused showing spot of incident and recovery of remains of dead body cannot be held against the present applicant as the statement was given by the co-accused and not by the present applicant. In this view of the matter, there is no

admissible piece of evidence against the present applicant. He deserves to be released on bail.

10. Hence the following order.

ORDER

- (i) In connection with C.R. No.I-179 of 2016 registered at Pimpri Police Station, Pune, 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.)