

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.284 OF 2021

AJAY MARUTI NIKAM

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Aniket Nikam i/b. Mr.Vivek Arote, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

RESERVED ON : 17th NOVEMBER 2021
PRONOUNCED ON : 25th NOVEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.I-49 of 2019 registered with Police Station Yeola Taluka, Nashik, for offence punishable under Section 396 of the Indian Penal Code (IPC).

AVK

1/6

2 The prosecution story in short is that the informant was employed with one GadePatil, owner of Stone crusher. Similarly, informant's father Tulshiram Surase (deceased for short) was also employed as a watchman there. On 27th March 2019 the deceased as usual had gone for his duty but did not return. Therefore, the informant visited the stone crusher center and spotted footwear of his father near the ten wheeler truck bearing Registration No.MH-15-BJ-7895. The informant also peeped inside the cabin of said truck and found his father dead with his legs tied with white coloured plastic tag and his hands with saffron coloured cloth. The deceased had also sustained injuries. Later on, the informant came to know that the accused persons killed his father and committed theft in respect of Tata Company Dumper from the spot. Accordingly, First Information Report (FIR) came to be lodged.

3 Mr.Aniket Nikam, learned counsel for the applicant, submits that the case of prosecution is based on circumstantial

evidence. There is absolutely no evidence to establish that either the applicant was seen in the company of the deceased or anything is recovered at his instance. The only evidence is that he was identified in the Test Identification Parade but that is not sufficient to connect the applicant with the offence. In such circumstances, the applicant deserves to be released on bail.

4 Mr.Dedhia, learned APP, on the other hand, submits that the applicant was duly identified in the Test Identification Parade. Except that, the learned APP also fairly submits that, no recovery has been made at the instance of the applicant, and therefore, appropriate order may be passed.

5 Perused the investigation papers and the statement of prosecution witnesses. From the statement of Govind Tulshiram Surase it appears that on 26th March 2019, he along with other labours, namely, Sachin Ratan Aher, Sanjay Prabhakar Wagh, Bharat Prabhakar Wagh and the owner of Crusher, namely, Kunal Sudam Kadam were chitchatting in between 5.30 p.m. to 6.00

p.m. A red coloured motorcycle came. There were three persons in it. They came up to the stone crusher, turned the motorcycle and without uttering a word went away towards Khamgaon village. It may be noted that here out of the above said persons, Kunal Sudam Kadam identified the applicant in the Test Identification Parade. Similar is the statement of Kunal Sudam Kadam.

6 As already noted, except the said Test Identification Parade, there is nothing on record to suggest that the applicant was in any manner involved in the alleged offence. No cogent and convincing material is forthcoming to establish atleast prima facie, the complicity of the accused-applicant in the offence.

7 For the aforesaid reasons, I hold that the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Ajay Maruti Nikam shall be released on bail in
Crime No.I-49 of 2019 registered with Police Station Yeola

Taluka, Nashik, on his executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall co-operate in expeditious disposal of the case.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)