

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

CRIMINAL BAIL APPLICATION NO. 499 OF 2021

Pratapsingh @ Banti Bhagwansingh Tyagi Applicant

Versus

The State of Maharashtra Respondent

Mr. S. V. Marwadi i/b. N. M. Nadar for Applicant.
Mr. S. H. Yadav, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 05th APRIL, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 969 of 2018 registered at Waliv police station, Dist. Palghar, on 21/10/2018, under sections 302 and 201 r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 29/01/2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Marwadi, learned counsel for the applicant and Shri. Yadav, learned APP for the State.

3. The prosecution case is that the deceased was constantly harassing the applicant and his wife Pinki @ Devi Pratapsingh Tyagi. The deceased was Pinky's brother and yet he had ill-intention for her. It is alleged that, he also had enmity with accused No.1 Ankush because of his love interest with one Poonam. The prosecution case is that, on 21/10/2018 at about 12:30a.m. the accused made deceased consume liquor and then he was taken to a bus stop near Royal Hill Hotel. The applicant then removed a hammer from bag of the deceased himself and gave blows on the head of the deceased and committed his murder.

4. Learned counsel for the applicant submitted that, this case is based purely on circumstantial evidence. According to him, three circumstances against the applicant are 1) Motive, 2) theory of last seen together, and 3) recovery of hammer at the instance of applicant and extra judicial confession given by the applicant to Pinki and Poonam.

5. Learned counsel for the applicant submitted that, each of these circumstances considered separately or collectively, is weak in nature and in any case they do not complete the chain of

evidence against the present applicant.

6. Learned APP, on the other hand, relied on the very same circumstances and contended that there is sufficient evidence against the present applicant and opposed grant of bail.

7. I have considered these submissions and with assistance of both learned counsel, I have perused the entire charge-sheet.

8. The F.I.R. is lodged by API Sanjay Patil. He has stated that, on 21/10/2018, at about 1:30p.m. one rickshaw driver reported to him that a person was lying injured in unconscious state near Royal Hill Hotel. The informant and his other colleagues went there. He saw that deceased was lying there in injured condition. He was taken to hospital, but he was declared dead. The postmortem notes show that the deceased had suffered as many as 11 injuries. Most of the injuries were on the head and could have been caused by hammer. The cause of death was mentioned as "Death due to intracranial haemorrhage due to head injury coupled with fracture of skull".

9. As pointed by learned counsel for the applicant, the

evidence against the present applicant is purely circumstantial in nature. As far as motive is concerned, the prosecution case is that the deceased was harassing the applicant and his wife. The deceased was having ill intention for applicant's wife, though she was his sister. In this background, statement of a bar owner is necessary to be seen. The Bar owner Babu Shetty and his employee Shivaji Bandekar have given their statements on 02/02/2019. They have stated that the deceased and applicant were seen consuming liquor in their bar in that night. These statements are used to show that the applicant was seen last in company of the deceased before the deceased was found murdered. These statement also show that prior to that incident the applicant and deceased were on cordial terms and were seen drinking liquor together. Therefore, motive becomes a little doubtful.

10. Second circumstance is of finding of hammer in a nalla at the instance of present applicant. In this context, statement of the applicant recorded under section 27 of Indian Evidence Act does not mention the place where he had concealed the hammer and clothes. Both these articles were recovered from a nalla and

bushes behind his room respectively. Those places were open and accessible to all.

11. The next circumstance is about Extra Judicial Confession, allegedly made by the applicant to Pinky and Poonam. Pinky's statement shows that, she along with applicant had gone to their native place. Police had arrested the applicant from his native place. This witness attended the police station on 01/02/2019. She had given her statement there and had referred to the Extra Judicial Confession, allegedly made by the applicant. Police did not record her statement immediately when applicant was arrested at the applicant's native place. Her statement is recorded after the applicant's arrest and after she had come back to Mumbai. Similarly, there is no explanation offered by this witness as to why she had kept silent for more than two months on this aspect. Therefore, this circumstance becomes weak, so far as, prosecution case is concerned. Similar is the case with the statement of Poonam who has also referred to such Extra Judicial Confession. Her statement was recorded on 11/02/2019. She also has not explained as to why she had kept silent for so many days. She was

not in touch with the present applicant and Pinky since 21/10/2018, therefore, there was no reason as to why her statement was not recorded earlier showing complicity of the present applicant. Thus, all these circumstances taken together or taken singly show that they are weak in nature. Therefore, the applicant can be granted bail in this case. All these observations made in this order are restricted to passing of this order. Trial court shall decide the trial on its own merits without being influenced by any of these observations. The applicant deserves to be released on bail.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 969 of 2018 registered at Waliv police station, Dist. Palghar, 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) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)