

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

CRIMINAL BAIL APPLICATION NO.358 OF 2020

Gopal @ Gopi @ Gopya Murari Gaikwad Applicant

versus

State of Maharashtra Respondent

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- Mr.Priyal G. Sarda, Advocate for Applicant.
- Mr.Ameet A. Palkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JULY, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.500/2018 registered with Bhosari Police Station, Pune, under sections 302, 201 r/w 34 of the Indian Penal Code. The Applicant was arrested on 23/09/2018 and since then he is in custody.

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2. Heard Mr.Priyal G. Sarda, learned counsel for the Applicant and Mr.Ameet A. Palkar, learned APP for the State.

3. The prosecution story is that the co-accused Rajkumar Gaware and the Applicant himself in collusion with each other assaulted Lavkush Kumar Pandey with sharp weapon like sickle and committed his murder.
4. The FIR was lodged by police constable Balasaheb Vidhate attached to Bhosari police station. He has stated that he was on duty between night of 22/09/2018 and 23/09/2018. He received a secrete information that a dead body was found at a ground at Bhosari. The informant and his colleague went there. They found the dead body. They informed their senior and he lodged this FIR. The dead body was found about 12.05 a.m, i.e. in the midnight between 22/09/2018 and 23/09/2018.
5. Mr.Sarda, learned counsel for the Applicant submitted that it is a case based purely on circumstantial evidence. The circumstances are almost non-existent against the present Applicant. There was no motive for the Applicant to have

committed murder or to have helped the co-accused in committing murder of the deceased. The circumstance of 'last seen together' is a weak piece of circumstance, because the dead body was found much later from the time when they were seen together. The circumstance of blood stains on his pant and shoes is not an incriminating evidence because the CA report shows that the blood group was inconclusive. Recovery from the co-accused cannot be held against the Applicant.

6. Learned APP opposed this application. He submitted that statement of one Neha shows motive. As far as the co-accused Rajkumar Gaware is concerned, there is recovery of knife at the instance of co-accused Gaware. There is theory of last seen together with the deceased. Blood stained clothes and pant of the Applicant show that it was human blood. All of them form complete chain of circumstances. Therefore bail should should not be granted to the Applicant.

7. I have considered these submissions. With assistance of

both learned counsel I have perused the charge-sheet. Neha's statement mentions that she was in love with the deceased. The Applicants co-accused Rajkumar Gaware, had seen their photos in deceased's phone. He deleted them. The deceased was suspecting that Rajkumar could misuse those photographs. There was some dispute between Rajkumar and the deceased. The accused Rajkumar had threatened to commit murder of the deceased. This is a circumstance against the co-accused Rajkumar. It has nothing to do with the present Applicant.

8. As far as theory of last seen together with the deceased is concerned, there is statement of one Sandip. He was brother of the deceased. He had stated that on 21/09/2018 the deceased had left the house by telling, him that he was going out with the accused i.e. Rajkumar Gaware and the present Applicant. He had left at about 07.15 p.m. on 21/09/2018 and thereafter he had not returned. Similar is the statement of Vijay Suraiha and Sudhanshu Pandey, who were staying with Sandip and the deceased. All these statements mention that the

deceased had told them that he was going out with the accused. But none of them say that they had seen the deceased actually in the company of both the accused. In any case, the dead body was found after a long gap of duration. Therefore there was no proximity of time between the deceased going out together with the accused and his dead body having been found at the spot which was at some distance.

9. In this context, statement of one Prasanna Garud mentions that on 21/09/2018, this witness had taken the accused Rajkumar Gaware's phone and had scolded the deceased on some issue. He has stated that the accused Rajkumar and the present Applicant had gone to Bhosari by informing this witness, but they had come back at 08.00 p.m. On the next date, the co-accused Rajkumar had attended his job and the Applicant was also with him. This witness was employer of the deceased and the co-accused Rajkumar. His statement shows that the accused had come back at 08.00 p.m. The deceased had allegedly gone out with the accused only for short duration as

indicated by these timings. Both the accused were in their office. This time gap is too short for commission of murder.

10. As far as recovery of knife is concerned, it was recovered at the instance of co-accused Rajkumar Gaware. Therefore it is not a circumstance against the present Applicant. Opinion as to cause of death was reserved awaiting chemical analysis report. The C.A. Report was subsequently received which did not reveal any poison in the viscera of the deceased. The post-mortem shows that there were atleast 14 injuries in the nature of the incised wounds, stab wounds and chop wounds. Obviously the death was caused because of these injuries. However, there is hardly any evidence connecting the Applicant with the crime.

11. As far as the finding of blood on the Applicant's pant and shoes is concerned, though articles were seized when the Applicant was arrested on 23/09/2018, the C.A. report shows that the blood found on those articles was human, but the blood

group was inconclusive. Therefore this circumstance also does not conclusively point to the guilt of the accused.

12. In view of this discussion, it appears that the case against the present Applicant is weak. These observations are made only for the purpose of decision of this bail application. Based on this discussion, the Applicant can be granted bail in this case. He is in custody since 23/09/2018 and the investigation is already over.

13. According to learned APP, there are five previous offences pending under section 379 of IPC against the Applicant. Therefore there will have to be check on his activities.

14. Hence, the following order :

ORDER

- (i) In connection with C.R.No.500/2018 registered with Bhosari 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 Applicant shall report to the concerned police station once a month till conclusion of the trial.
- (iii) The Applicant shall attend all the dates in the trial Court unless exempted by the trial Court.
- (iv) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)