

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

CRIMINAL BAIL APPLICATION NO. 520 OF 2021

Ashish Dayanand Kolhe

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Ms. Sana Raees Khan i/b. Hulyalkar and Associates for Applicant.
Mr. S. R. Agarkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 17th MAY, 2021
(Vacation Court)
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 308 of 2020 registered at Bhosari police station, Pimpri-Chinchwad, on 18/06/2020, under sections 302 and 201 r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 19/06/2020 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Ms. Sana Raees Khan, learned counsel for the applicant and Shri. Agarkar, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by one Nitin Shinde in respect of murder of one Ajay Suryavanshi. In the F.I.R., the first informant Nitin Shinde has stated that, Ajay Suryavanshi was his nephew. On 18/06/2020 Ajay had gone out of his house. At about 3.15p.m. one of the accused Aniket @ Dulya Gaikwad came to the informant's house and asked him about Ajay. The informant told him that Ajay had gone out. At 5.15p.m. one Vishnu Gaikwad came to the informant's house and told him that somebody had committed Ajay's murder and he was thrown near the river below Harris bridge. The informant and others rushed there. He saw two big stones having blood stains, liquor bottles etc. lying at the spot. He informed the police. Police came there. Ajay was taken to YCM Hospital, Pimpri. He was declared dead. The F.I.R. mentions that one Nitin Kamble had told the informant that, at about 2.45p.m. accused Milind Alhat, Aniket Gaikwad and present applicant were seen drinking liquor at that spot. On this basis the informant

expressed suspicion against the present applicant. He was arrested.

4. Learned counsel for the applicant submitted that this case is purely based on circumstantial evidence and there are no incriminating circumstances against the present applicant. There is no recovery. Even the theory of 'last seen together' is applicable to other accused and not to the present applicant.

5. Learned APP opposed this application. He submitted that, presence of the applicant at the spot around same time is an incriminating circumstance. CDR report shows that, other accused had called the present applicant telephonically around that time.

6. I have considered these submissions and with the assistance of both learned counsel I have perused the entire charge-sheet. One of the important statements in this case is that of Nitin Kamble. He has stated that, on 18/06/2020 at about 3.00p.m. he had gone to Harris bridge to answer nature's call. At that time, he had seen accused Milind Alhat, Aniket Gaikwad and present applicant. They were drinking liquor. Significantly, this witness has not seen the deceased with these accused at that time. In the evening he came to know that Ajay was assaulted at that

spot. Therefore, he was convinced that, all the three accused including the present applicant had committed this offence.

7. The postmortem notes show that, the death was due to head injury with strangulation. There were many wounds on the body of the deceased in the nature of abrasion, depressed fracture of skull etc. The deceased was strangled. His head was crushed with stone.

8. The question is whether there is sufficient material against the present applicant. As pointed out earlier, Nitin Kamble's statement shows that the applicant was consuming liquor with other accused at 3 O' clock. At that time the deceased was not with them. In this background, statement of one Chirag Kate is important. He was owning a wine shop by name Raja Wines. He has stated that accused Aniket Gaikwad and Milind Alhat had come to his shop with deceased Ajay for purchasing liquor. There is supplementary statement of the first informant dated 22/06/2020. He has stated that, he was shown CCTV footage of that wine shop for the period 3:22p.m. to 3:33p.m. In that CCTV footage he had seen the deceased with other accused namely Aniket Gaikwad and

Milind Alhat at the wine shop. Significantly, the applicant was not seen in that CCTV footage. Statement of Milind Kachi who was having a pan shop near that wine shop has stated that, at about 3.15p.m. on 18/06/2020 accused Aniket and Milind had come to that wine shop with the deceased Ajay on a motor bike.

9. All these statements show that there is evidence that initially the applicant had consumed liquor with other two accused. Deceased was seen at the wine shop between 3.22p.m. to 3.33p.m. with other two accused. From that point onwards, there is no mention of the present applicant. Therefore, the theory about accused having been seen last together with the deceased is not applicable to the present applicant. That circumstance is against the other two accused. Therefore, at this stage, there is hardly any evidence against the present applicant. Considering the weak nature 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. 308 of 2020 registered at Bhosari police station, Pimpri-

Chinchwad, 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.)