

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

BAIL APPLICATION NO.572 OF 2020

Muktar Ramzan Ali Khan @ Babalu	.. Applicant
<i>Versus</i>	
State of Maharashtra	.. Respondent

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Mr.S.V. Marwadi i/b. Mr.Narayanganesh Nadar, Advocate for the Applicant.

Mr.Y.M. Nakhwa, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 05, 2021.

P.C. :

Applicant is seeking bail in connection with C.R.No.I-755 of 2019, registered with Tulinj Police Station, Palghar, for offences punishable under Sections 302 and 201 of Indian Penal Code ("IPC", for short).

2 The prosecution case is that on 21st June, 2019, the police were informed about body of unknown person lying in a bag thrown in a gutter near Sagpada, Nalasopara. The bag was opened and the body was sent to the Government hospital. The body was identified as that of Krushna Sahani. He was husband

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Aher**

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of accused no.3. During investigation, it was revealed that accused no.2 had illicit relationship with accused no.3 and the deceased on knowing this, used to harass accused no.3. Accused nos.1 to 3 killed the deceased. The deceased was killed with hammer, which was allegedly recovered at the instance of the applicant from the house of the deceased. It is further alleged that the body of the deceased was disposed of by accused nos.1 and 3. In the CCTV Footage recovered during investigation, it is seen that accused no.2 is seen riding the motorcycle and accused no.1 is a pillion rider holding the bag containing dead body of the deceased. Accused no.3 is seen standing near the motorcycle. Accused no.1 showed the place where the body of the deceased was dumped and at the instance of the applicant, hammer and motorcycle used in the crime were recovered.

3 Learned counsel for the applicant submitted that the case is based on circumstantial evidence. Except for the recovery of blood stained hammer from the flat of the deceased at the instance of the applicant, there is no other evidence against him. The place from where the weapon was recovered was visited by the police and the forensic team on 25th June, 2019, and, nothing incriminating was noticed at that point of time. The applicant is in

custody from 26th July, 2019. The persons who had seen in the CCTV Footage were not identified as the applicant and accused no.1. It is further submitted that there is discrepancy with regards to the date and time when the CCTV Footage was recorded. Statement of Subramanyam Kalyan Mugres mentions that he had spoken to the deceased on 19th June, 2019 at 10:00 p.m., which indicate that he was alive. Applicant is resident of Nalasopara and the evidence of alleged tower location cannot be said to be incriminating against him.

4 Learned APP submitted that the offence is of serious nature. The accused no.2 had illicit relationship with accused no.3. The applicant had strong motive to commit the murder. There is recovery of weapon from the applicant. Tower location shows his presence in the area. Opinion of Doctor mentions that the incident of murder could have occurred 5 to 6 days prior to the date of finding of body. There are calls between applicant and accused no.3.

5 Undisputedly, the case is based on circumstantial evidence. The prosecution has attributed motive to the applicant. CCTV Footage refers to two persons on motorcycle carrying bag

which was purportedly containing dead body of the deceased. However, there is no identification to show that the accused nos.1 and 2 are persons who are riding the motorcycle and carrying the bag. The prosecution relies upon the recovery of hammer. It appears that the place was visited by the investigating team prior to the alleged recovery. It is further alleged that there are calls *inter-se* between applicant and accused no.3. The SIM card and the cell phone appears to be in the name of the deceased. Assuming that there are calls between accused no.3 and the applicant, and the tower location about his presence in the area, it can be at the most inferred that both accused were acquainted with each other. The applicant is resident of said area, and, tower location cannot be adverse against him. On the basis of evidence collected by police, further detention of applicant is not warranted. In the circumstances, bail can be granted to them.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Bail Application No.572 of 2020, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.I-755 of 2019, registered

with Tulinj Police Station, Palghar, on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall report concerned police station once in three month on first Saturday of the month between 11:00 a.m. to 01:00 p.m.;
- (iv) Bail Application No.572 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)