

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

CRIMINAL BAIL APPLICATION NO. 782 OF 2020

Kisan Suresh Nuyya

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Mir Nagman Ali, for the applicant.

Mr. S.H. Yadav, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 9th FEBRUARY 2021**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No. 2 of 2019 registered at Lashkar Police Station, Pune, on 01/01/2019, under Sections 302, 201 of the Indian Penal Code. The applicant was arrested on 01/01/2019 itself, and since then, he is in custody. The investigation is over and charge-sheet is filed.

2. Heard Mr. Mir Nagman Ali, learned Counsel for the applicant and Mr. S.H. Yadav, learned APP for the

State.

3. The FIR is lodged by PSI Jyoti Panhale. She has stated that on 31/12/2018, in the evening, a dead body of unknown person was found in a canal behind the girls school behind Deccan Tower, in the jurisdiction of Lashkar Police Station. The Police Officer saw that there was blood around the area. The police Officer searched for other signs in that area. It was seen that the dead body had many injuries all over the body. On this basis the FIR is lodged.

4. The prosecution case is that the deceased was working with the applicant on his small food stall. The deceased was having ill intention about applicant's wife. The wife had told this fact to the applicant and, therefore, the applicant committed murder of the deceased.

5. Post mortem notes show that there were 16 injuries all over the body of the deceased. Most of them were chop wounds and incised wounds. The death was

caused due to chop injuries over head and neck and stab injury.

6. Learned Counsel for the applicant submitted that there are only two circumstances against the present applicant. One is confessions made in presence of the wife and the mother of the applicant, to the police and the other is recovery of sickle from bushes near the spot where the dead body was found. He submitted that the first circumstance is clearly not admissible in view of Section 25 of the Indian Evidence Act. He submitted that the other circumstance of recovery of weapon from the spot is also not incriminating, as the spot is accessible to all and police had taken search of the spot when the dead body was found. That time no weapon was found.

7. Learned APP opposed this application. Besides these two circumstances, he relied on the statement of one shop owner Jaysing Pawar from whom the applicant had purchased a heavy sickle.

8. I have considered all these submissions. As far as confessions are concerned, statements of the mother and the wife of the applicant are important in that behalf. They have stated that on 31/12/2018, between 8.00 p.m. to 9.00 p.m., two police officers had come to the applicant's house. They met the applicant and made inquiry with him. At that time, the applicant told the police in presence of these two witnesses that he had committed murder of the deceased because he was having ill- intention towards his wife.

9. As far as these two confessions are concerned, they are hit by Section 25 of the Indian Evidence Act and, therefore, they are not admissible. In addition, the statements of these two witnesses are also recorded under section 164 of Cr.P.C. At that time, both of them have stated that the police had come to their house for making inquiries but there is no reference to the confession having been made by the present applicant.

Therefore, this circumstance is not incriminating circumstance against him.

10. Other circumstance of recovery of sickle is also not a strong circumstance. As rightly pointed out by the learned Counsel for the applicant, sickle was found from open space near the spot which was accessible to all. Significantly, FIR itself mentioned that when the dead body was found police had taken search of nearby places. Therefore, there is some substance in the argument of learned counsel for the applicant. Recovery of the sickle after a few days from the same spot is doubtful.

11. As far as third circumstance pointed out by learned APP is concerned, the shop owner's statement is recorded much belatedly on 27/02/2019 in respect of purchase of weapon by the applicant. Even in that statement, date on which the weapon was purchased is not mentioned. Therefore, this circumstance is not an incriminating circumstance.

12. Considering this weak nature of evidence against the present applicant, he deserves to be released on bail.

13. Hence, the following order :

ORDER

- (i) In connection with C.R. No. 2 of 2019, registered with Lashkar 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 Thrity Thousand Only) with one or two sureties in the like amount.
- (ii) The application stands disposed of accordingly.

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(SARANG V. KOTWAL, J.)