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

BAIL APPLICATION NO. 1582 OF 2021

Balasaheb @ Babasaheb Baliram Bangar ...Applicant

Versus

The State of Maharashtra ...Respondent

.....
Mr.Aniket U. Nikam i/b. Mr. Vivek N. Arote for the Applicant.
Smt. M.M. Deshmukh, APP for the Respondent -State.

.....
CORAM : V.G.BISHT, J.
RESERVED ON : 30TH NOVEMBER, 2021
PRONOUNCED ON : 14TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 160 of 2019 registered with Ghodegaon Police Station, Pune Rural for the offence punishable under Sections 302 and 201 read with 34 of the Indian Penal Code (the IPC).

2. It reveals from the First Information Report that deceased Santosh Namdev Vharkate and the applicant were

working in the postmortem department, Rural Hospital, Chakan as a cutter with Dr. Pravinkumar Pandurang Ingale. The prosecution alleges that as the deceased had used abusive language against the wife of applicant, the applicant with the help of other co-accused assaulted deceased by sickle near Rural Hospital, Chakan. The accused wrapped the dead body of the deceased in a plastic bag, shifted it in a santro car and later on threw his body in a valley with an intention to cause the evidence disappear.

3. Mr.Nikam, learned Counsel for the applicant, submits that the case of prosecution rests on circumstantial evidence and also invited my attention to the statements of prosecution witnesses, namely, Ravi Suresh Lohire and Amol Dharma Ingale. Besides, learned Counsel also invited my attention to the discovery statement given by the applicant under Section 27 of the Evidence Act. According to learned Counsel, there was a huge time gap between the alleged incident and the discovery of the dead body and in such circumstances, it

cannot be said that it was the applicant who committed the murder of deceased. There are no other criminal antecedents. Investigation is over. Hence, the applicant deserves to be enlarged on bail, submitted learned Counsel.

4. Mrs. Desmukh, learned APP, on the other hand, submits that the circumstances are in favour of the prosecution. Learned APP then invited my attention to the discovery statement given by applicant pursuant to which the spot was revealed and other things came to be seized by the investigating officer. There being sufficient evidence on record, the application is liable to be rejected, argued learned APP.

5. Perused investigation papers including the postmortem report. The cause of death shown is due to intracranial hemorrhage due to head injury.

6. Coming to the statements of prosecution witnesses, the statement of Ravi Suresh Lohire shows that on 11th October, 2019, while the applicant was cleaning freezer room where the dead body is to be kept, he and Dr. Ingale enquired as to where deceased is. Applicant replied that yesterday night, the deceased had consumed much liquor and under the influence had broken his mobile. He had therefore removed his second mobile and then handed over the same to this witness. He also expressed ignorance as to whereabouts of the deceased.

7. The statement of Amol Dharma Ingale then shows that on 9th October, 2019 at about 10.00 pm., when this witness had gone to deceased to give Rs.500/- which he had taken from him, he found that the deceased and the applicant were consuming liquor and eating bhel in front of postmortem room. He therefore gave Rs. 500/- to deceased and went away.

8. As far as the first statement of Ravi Suresh Lohire is concerned, all that can be inferred is that on 10th October, 2019, the applicant found deceased heavily drunk and under the influence had broken his mobile phone. Therefore he (applicant) removed his another i-phone and on the next day, on being enquired by this witness, handed over the same to him.

9. The statement of this witness does not in any manner suggest that the applicant had any role to play behind the death of deceased.

10. As far as the second statement of Amol Dharma Ingale is concerned, the presence of applicant along with deceased at about 10.00 pm and that too on 9th October, 2019 was quite natural inasmuch as both were employed with the hospital and were working in postmortem department. It was not quite unnatural that the applicant was seen in the company of deceased on 9th October, 2019.

11. The prosecution is only harping on the discovery statement given by applicant. The said discovery statement is dated 16th October, 2019. It appears that the applicant had shown his willingness to show the place where he had killed the deceased and had thrown the body. He had also agreed to show the place where he had burnt the plastic and seats cover of the vehicle and as also weapon used and the clothes which he was wearing at the time of incident.

12. It further appears that stone, sickle and clothes, which were recovered at the instance of applicant were having blood stains. It is interesting to note that while the witness Amol Ingale says that the applicant was seen in the company of deceased at about 10.00 pm on 9th October, 2019, the statement of Ravi Lohire suggests that the applicant told him that he was in the company of deceased on 10th October, 2019 at 10.00 pm.

13. It may be noted here that, the body was found before

5.15 pm. of 10th October, 2019. Thus, there was substantiate time gap of noticing the applicant in the company of deceased and finding of dead body of the deceased. Even otherwise, except the evidence of recovery, as noted above, there is no other material on record against the applicant.

14. In view of above, I am inclined to allow the application. Hence, the following order :

ORDER

(i) Applicant- Balasaheb @ Babasaheb Baliram Bangar shall be released on bail in C.R. No. 160 of 2019 registered with Ghodegaon Police Station, Pune Rural on his executing PR. Bond in the sum of Rs. 25,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)