

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

CRIMINAL BAIL APPLICATION NO. 1387 OF 2021

Devappa Hanumant Pujari Applicant

Versus

The State of Maharashtra Respondent

Mr. Viresh V. Purwant for Applicant.
Smt. Veera Shinde, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 09th JUNE, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 322 of 2019 registered at Akkalkot South police station, under sections 302, 323, 112, 504 and 506 r/w. 34 of the Indian Penal Code (for short 'IPC'). The applicant was arrested on 27/07/2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Viresh Purwant, learned counsel for the applicant and Smt. Veera Shinde, learned APP for the State.

3. The prosecution case is in respect of murder of one Duryodhan Dumgane. He was allegedly murdered by his own daughter Mahananda. Initially, no complaints were made about his death and his body was buried as per religious rites. Thereafter, nephew of the deceased got suspicious and gave complaint to the police. The body was exhumed and postmortem was carried out. The postmortem notes show that, cause of death was due to “Hemorrhagic shock due to multiple bone fracture and internal organ injury”. Thus, it was homicidal death. Based on this, F.I.R. was lodged by son of the deceased on 27/07/2011. In the F.I.R. it is mentioned that, main accused Mahananda was having affair with the applicant who was her cousin. The deceased did not allow this and there used to be frequent quarrels between Mahananda and deceased Duryodhan. On one occasion the applicant and his friend Sunil Pawar had even threatened the informant’s family. On 24/07/2019 there was a quarrel between Mahananda and deceased. The informant was sent to their agricultural land to attend to their cattle. On 25/07/2019 in the midnight the applicant woke up the informant and told him that Duryodhan was

serious and he was to be taken to Dispensary. The informant went to his house. He saw that his father Duryodhan had already died. On the next day, Mahananda and applicant hurriedly completed religious rites and buried the dead body. It is mentioned in the F.I.R. that, on 26/07/2019, at about 7:30p.m. the applicant was passing through a road near village library, that time he had seen the applicant and Mahananda talking with each other. It is mentioned in the F.I.R. that, at that time, Mahananda told the applicant that she had committed murder of her father by throwing stone on his chest and that was done on the instigation of applicant and Sunil. The informant told this fact to his cousin Maruti Dumgane and thereafter applications were made leading to filing of F.I.R.

4. Learned counsel for the applicant submitted that, conduct of the informant is highly improbable. The prosecution case, in any case, was that the deceased was murdered by his own daughter Mahananda. He further submitted that, co-accused Sunil Pawar, who was similarly placed, was granted bail by this court vide order dated 10/07/2020 in Criminal Bail Application No.175

of 2020. He submitted that, on the ground of parity the applicant deserves to be released on bail.

5. Learned APP opposed this application. She relied on the statement of Maruti Dumagane which was recorded under section 164 of Cr.p.c. That statement makes a reference to an extra judicial confession made by Mahananda to him wherein she had stated that the applicant had smothered the deceased with a pillow, Sunil had caused injuries to private parts of the deceased and Mahananda had held legs of the deceased. She submitted that, this statement shows active role of the applicant.

6. I have considered these submissions and with the assistance of both learned counsel I have perused the entire charge-sheet. The statement of the informant itself is hard to believe. It is rather difficult to believe that he accidentally heard Mahananda confessing her guilt to the applicant at about 7:30p.m. on 26/07/2019. In the background of fact that the accused Mahananda and applicant were together throughout the day, there was no reason for the accused Mahananda to make such confession. In any case, that confession itself shows that

Mahananda had committed murder of the deceased. Only allegation against the applicant that he instigated her as per said extra judicial confession. While granting bail to Sunil, the statement of Maruti recorded under section 164 of Cr.p.c. was taken into consideration. His statement under section 161 was also considered wherein he had made no reference to any such extra judicial confession. His statement under section 164 of Cr.p.c. was recorded much belatedly. Since, Sunil was granted bail, principle of parity applies to the present applicant. In view of this discussion, the applicant deserves to be released on bail.

7. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 322 of 2019 registered at Akkalkot South police station, 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.)