

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

CRIMINAL BAIL APPLICATION NO.1547 OF 2021

Rahul Samadhan Shinde	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Kalpesh U. Patil, Advocate for the Applicant.
Smt. J.S. Lohokare, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.
DATE : 16th JUNE, 2021
[Through Video Conferencing]

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.468/2018 registered at Karad city police station, District-Satara under Sections 302, 120-B read with 34 of the Indian Penal Code. The Applicant was arrested on 8.6.2018 and since then he is in custody.

2. Heard Shri Kalpesh Patil, learned Counsel for the Applicant and Smt. J.S. Lohokare, learned APP for the State.

3. The prosecution case is that the deceased Sachin Kamble was addicted to liquor and he was constantly harassing his wife Aarti,

who is one of the accused. Arti was having love affair with one Shashikant @ Appa Bhosale. They decided to commit murder of the deceased Sachin Kamble. For that purpose the present applicant and accused Kumar Patankar were told to execute their plan. On 19.5.2018 at about 1:00 p.m. the deceased was taken to some place under false pretext by the applicant and co-accused Appa and thereafter he was taken to a secluded spot. By using a knife his throat was slit and murder was committed.

4. The FIR was lodged by one Prakash Waidande. He was knowing deceased Sachin and accused Aarti. He has given history of their relations. The FIR mentions that the informant was told by one Mahesh that Appa and one more person had taken Sachin with them at about 1:00 p.m. on 29.5.2018. On 30.5.2018 he came to know that a dead body was found in the agricultural field of one Jaywant Dabal. The informant went there. He saw it was the dead body of Sachin Kamble. He had suffered injuries on his throat and abdomen. On this basis, the FIR is lodged.

5. Learned Counsel for the applicant submitted that the main co-accused Appa @ Shashikant Bhosle and Aarti Kamble have

been granted bail. There is hardly any evidence against the present applicant. Recovery of knife at the instance of the present applicant is not connected with the alleged offence. He submitted that there is a circumstance of extra judicial confession allegedly made by Aarti to one Vaishali Zombade. However, that statement is not believable. Vaishali's statement is recorded belatedly on 11.6.2018 and in any case it cannot be used as the only piece of evidence to convict the present applicant. He submitted that the theory of 'last seen together' is also a weak piece of evidence because the witnesses had seen the deceased with the applicant at about 11:00 a.m. on the earlier day and the dead body was found in the evening on the next day at a distant place.

6. Learned A.P.P. submitted that a shop owner from whom the knife was purchased by the applicant has given his statement that the police had shown CCTV footage of his shop. He had allegedly identified the applicant from CCTV footage. She relied on the extra judicial confession made by Aarti wherein she had told Vaishali that the applicant and other accused had committed murder of Sachin Kamble. These are her main submissions.

7. I have considered these submissions. I have perused the charge-sheet. As far as the extra judicial confession is concerned, allegedly it was made by Aarti to Vaishali Zombade. Vaishali's statement was recorded belatedly on 11.6.2018. Vaishali has stated that on 31.5.2018 Arti, her three daughters, Appa, Kumar and the present applicant had come to Barshi. She wanted to stop in Barshi for some time. Vaishali had helped her in getting a room. It is mentioned that on 6.6.2018 the accused Aarti told her that her husband Sachin Kamble was murdered by the persons who had come with Aarti to Barshi. Vaishali did not immediately tell this fact to the police.

8. As far as this extra judicial confession is concerned, it was considered in the previous orders granting bail to Aarti and Appa and it was observed that it was a weak piece of evidence. In any case since that is the only piece of evidence against the applicant it by itself cannot form basis for conviction.

9. As far as recovery of knife is concerned, the charge-sheet shows that the knife was recovered at the instance of the applicant on 9.6.2018. However, the memorandum statement recorded by the

police does not mention the place where the knife was thrown or the shop from which it was purchased. The knife itself was recovered from the same agricultural field where the dead body was found. It was not even concealed. It is a weak piece of evidence.

10. The statement of shop owner from whom the knife was purchased is recorded. This witness has merely stated that one unknown boy had purchased a knife from his shop on 29.5.2018. He had shown willingness to identify that person. However, no identification parade is held and his statement does not itself show that he had identified the applicant in any CCTV footage. In any case such identification without holding of any identification parade is also not reliable.

11. There are statements of witnesses, like, Laxman Sawant. He has stated that the deceased was seen in the company of the applicant and Kumar at 11:00 a.m. on 29.5.2018. All of them were drinking liquor. However, the dead body was found in the evening on the next day at a distant place. Therefore, there was neither proximity of time nor of place. Hence even this piece of evidence is quite weak.

12. Considering all these aspects, sufficient doubt is created about the applicant's participation in the offence. The evidence collected by the investigating agency is weak. Therefore, the applicant deserves to be released on bail during pendency of the trial. Hence, the following order :

ORDER

- (i) In connection with C.R.No.468/2018 registered with Karad city police station, District-Satara, 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) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)