

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1461 OF 2019**

Ajay @ Ajit Kishor Shigvan ..Applicant

v/s.

The State of Maharashtra ..Respondent/s

Mr. Satyavrat Joshi i/b. Nitesh Mohite for the Applicant.
Mr. P.H.Gaikwad, APP for the Respondent-State.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : JULY 12, 2021.**

P.C.

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973, filed by the Applicant who has been arrested in Crime No. 48 of 2018 registered with Nigdi Police Station, Pune for an offence under Section 302 of the Indian Penal Code.

2. The aforesaid crime was registered pursuant to the First Information Report dated 20.01.2018 lodged by one Pandit Vaman Kamble. He was informed that the deceased Amit Pandit Kamble was lying in an injured condition in a tin shed in front of Mahendra showroom. The first informant went to the spot of the

incident and saw Amit Kamble lying in an injured condition. The injured Amit was shifted to the hospital but he was declared dead. The first informant lodged the FIR suspecting that the Applicant herein and some other co-accused had committed murder of Amit in view of previous enmity. Based on the said FIR, Crime No.48 of 2018 under Section 143, 147, 302, 506 r/w. 149 of IPC and 37(1) and 135 of Bombay Police Act came to be registered against the Applicant and other co-accused.

3. The records reveal that there is no direct evidence as against the Applicant. The only evidence relied upon by the prosecution is the statement of Akanksha- sister of the deceased and the CCTV footage. The statement of Akanksha indicates that while she had gone to fetch water from a drum outside her house, she had seen the deceased Amit going along with the co-accused Vinod and Harish Shivgan. She claims that on the same evening, at about 4.00 p.m. while she was proceeding towards Rajeshree Variety Store near one Masjid she had seen the Applicant and the other co-accused running away. Suffice it to say that the mere fact that the witness had seen the Applicant running away cannot prima

facie be considered as an incriminating circumstance.

4. The prosecution has also relied upon the CCTV Footage wherein the Applicant and other co-accused are allegedly seen entering the tin shed where Amit was seen in injured condition. The statement of Satish Hadkar, photographer, reveals that he had copied the CCTV footage on a pen drive and prepared a CD and handed it over to the Investigating Officer. The statement of Rakesh Chorge also indicates that the CCTV footage was viewed by the police in his presence.

5. It is not in dispute that the prosecution has not relied upon the transcript of the CCTV footage. There is nothing on record to indicate that the CCTV footage was viewed in presence of the panchas and /or the same was shown to the sister of the victim and or the first informant as to establish the identity of the Applicant and the other co-accused. Thus, prima facie there is no direct or circumstantial evidence to connect the Applicant with the crime.

6. It is also stated that the other co-accused - Ashish and Dashrath have been released on bail. There is thus no reason to detain the Applicant in custody, moreover when the investigation has been completed in all aspects and there is no possibility of the Applicant tampering with the evidence or the witnesses. Under the circumstances, the application is allowed on the following terms and conditions:

- (i) The Applicant be released on cash bail in the sum of Rs.25,000/- for a period of eight weeks;
- (ii) The Applicant shall within the said period of eight weeks, furnish P. R. Bond in the sum of Rs.30,000/- (Rs. Thirty Thousand Only) with one or two sureties in the like amount;
- (iii) The Applicant shall keep the trial Court informed of his current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time;

. The application is accordingly disposed of.

(ANUJA PRABHUDESSAI, J.)