

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

CRIMINAL BAIL APPLICATION NO.2774 OF 2021

Deepak Jayrappa Pujari	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Bhomesh Ramesh Bellam a/w Ms. Anusha Pradhan for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 1st OCTOBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 119/2020 registered with the Upnagar Police Station, Nashik, for the alleged offence punishable under Section 302 r/w 34 of the Indian Penal Code.

3 Perused the papers. According to the prosecution, Prashant Wagh (deceased) quarreled with his wife-Sanju on 26th February 2020. The deceased abused her and assaulted her, due to which, Sanju left her house along with her son on 28th February 2020 at 10:00 a.m. According to the prosecution, Prashant (deceased) called the applicant and asked whether his wife and son had come to their house and whether he was hiding them; that the applicant met Prashant and tried to pacify him and explained to him, but Prashant refused to listen to him and abused him. According to the prosecution, the applicant decided to kill him and hence, called accused No.2-Manoj Shardul over to his house after which, the applicant, the deceased and accused No.2-Manoj visited a country liquor bar. It is alleged that all of them left the country liquor bar at 10:30 p.m in the same auto-rickshaw, in which they had come, after which, the applicant went home and brought an iron sickle and went to Tulza Bhawani Mata Mandir near Fernandes Wadi along with the deceased and accused No. 2-Manoj. It is alleged that thereafter accused No.2-Manoj assaulted the deceased on his neck and head with the sickle, after which, the applicant took the sickle from accused No. 2 and assaulted the deceased.

4 The prosecution case rests on circumstantial evidence i.e. the evidence of last seen, recovery of sickle and an extra judicial confession

made by the applicant to his wife. As far as the evidence of last seen is concerned, the waiters at the Bar have disclosed about an unknown person coming with the deceased however, since test identification parade was not held, the applicant had not been identified. The same is not disputed by the learned A.P.P

5 As far as extra-judicial confession made by the applicant to his wife is concerned, learned counsel for the applicant relied on the judgment of this Court in ***Emperor vs. Ramchandra Shankarshet Uravane***¹ and on the judgment of the Rajasthan High Court in ***Omprakash vs. State of Rajasthan***². Having regard to the same, whether the said confession can be said to be extra-judicial confession or whether it is protected under Section 122 of the Evidence Act, is a matter, which will be decided by the trial Court.

5 What is important to note is that the statement of the applicant's wife was recorded belatedly after almost 2 weeks i.e. on 13th March 2020 and the statements of neighbours were recorded after more than 2 months, in which they have stated that the applicant was last seen with the deceased.

1 AIR 1933 Bom. 153

2 1985 (2) WLN 592

6 As far as the circumstances of recovery of sickle at the instance of the applicant is concerned, from the perusal of the panchanama, it appears that the said sickle was not blood-stained.

7 Learned counsel for the applicant submitted that the deceased had certain antecedents and as such the possibility of somebody else assaulting the deceased, could not be ruled out. Learned counsel relied on the statements of the deceased's mother with respect to the antecedents of the deceased and the treatment meted out by the deceased to his wife. It appears that the deceased was a history-sheeter and was involved in the business of illicit trading of drugs. These are the only circumstances as against the applicant. The applicant has no antecedents.

8 Considering the aforesaid, the applicant has made out a *prima facie case* for grant of bail. Accordingly, the application is allowed and the applicant is enlarged on bail, on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the first and the third Saturday of every month between 10:00 a.m. to 12:00 noon, till the conclusion of trial;

(iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

9 The application is accordingly disposed of in the aforesaid terms.

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

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.