

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

CRIMINAL BAIL APPLICATION NO. 1279 OF 2020

Suresh alias Balasaheb Satpute	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Abhishek R. Avachat, for the applicant.
Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM: SARANG V. KOTWAL, J.
DATE : 9th June, 2021
(Through Video Conferencing)

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 473 of 2019 registered at Paud Police Station, Pune, on 09/11/2019 under sections 302 of the Indian Penal Code. The applicant was arrested on 09/11/2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Abhishek Avchat, learned counsel for the applicant and Ms. Pallavi N. Dabholkar, learned APP for the State.

3. The prosecution case is in respect of murder of one Vilasrao Sabne. The FIR is lodged by wife of the deceased Vidya on 09/11/2019. She has stated that the deceased had decided to purchase a land bearing gut No. 298/2, admeasuring 13 gunathas belonging to the present applicant. The price was fixed at Rs. 09,10,000/-, out of which Rs. 5 lakhs were paid to the applicant and the balance amount was to be paid within one year after registration of the Sale Deed. On 07/11/2019, the applicant telephonically called the deceased and asked him to come to Chandani Chowk. The deceased left his house at around 9.15 a.m. on his two wheeler and since then he never returned. The first informant called the deceased at 12.00 p.m. telephonically. That time the deceased had informed her that he was present in the land mentioned above with the present applicant. They were waiting for the officers who were to conduct measurement. At about 5.00 p.m. she again called the deceased but the call was not answered. Thereafter his phone was unreachable. The informant then contacted

one Santosh Shendage and gave a complaint about missing of the deceased. That complaint was given at Deccan Police Station on 08/11/2019 at about 12.45 p.m. On the next day, at about 12.30 a.m., the Police Officers from Paud Police station, called the informant to the same land as a dead body was discovered there. The informant and her son Prathamesh went to the land at gut No. 298/2. She found that her husband was lying dead there. He had suffered injuries on his chest and stomach with sharp weapon. His mobile phone and glasses were lying nearby. Obviously he was murdered. On that basis the FIR was lodged.

4. Learned Counsel for the applicant submitted that the prosecution case is based on circumstantial evidence. The circumstances are weak and they did not complete the chain. He submitted that the deceased had left his house on 07/11/2019 and his dead body was discovered two days later i.e. on 09/11/2019. Therefore, there is no proximity of time. He further submitted that

there are no witnesses who had seen the deceased with the applicant. Though one witness Kisan Pakire had stated that on 07/11/2019, the applicant had gone to his land with an unknown person, the dead body of the deceased was not shown to this witness to enable him to identify that the deceased was the same person who had accompanied the applicant. He submitted that there is recovery of knife and blood stained clothes at the instance of the present applicant. He further submitted that the post mortem note shows that the injuries were in the nature of C.L.W and therefore they could not have been caused by sharp weapons. He submitted that the applicant is 65 years of age and therefore leniency should be shown to him.

5. Learned APP opposed this application. She submitted that the chain of circumstance is complete and it points to the guilt of the applicant. She submitted that considering the nature of injuries and allegations, leniency cannot be shown to the present applicant.

6. I have considered these submissions. With the assistance of both learned Counsel, I have perused the charge-sheet.

7. The FIR mentions that the informant had called the deceased at about 12.00 p.m.. At that time she was informed by the deceased that he was in the company of the applicant and both of them were present in the land in question. This statement relates to the circumstances of the transaction resulting in death and therefore it can be treated as oral dying declaration.

8. Section 32 (1) of the Indian Evidence Act reads thus:-

“(1) When it relates to cause of death:- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the

time when they were made, under expectation of death, and whatever may be the nature of proceeding in which the cause of his death comes into question.”

Therefore, the last conversation made by the deceased with the informant regarding the circumstances of the transaction which resulted in his death even if at that point of time he might not be under expectation of death; will amount to dying declaration as provided under the above provision.

9. The applicant was in the company of the deceased in the same piece of land where the dead body was discovered. The deceased was taken to the land on the pretext that measurement was to be carried out. However, nobody turned up for carrying out measurement. It appears it was merely an inducement made by the applicant to get the deceased there. The post mortem notes show that rigor mortis had passed off. The post mortem was conducted on 09/11/2019 at about 11.00 p.m.. It means that death had occurred a long

time before the post mortem was conducted and the time is near to the point when the deceased was present in the land with the applicant.

10. There is another circumstance of recovery of knife and blood stained clothes at the instance of the present applicant. The post mortem notes show that there were C.L.W.'s but the description also shows that there was depth to some injuries. Therefore it is not possible to observe that sharp weapon was not used. The cause of death was mentioned was cardio respiratory arrest due to asphyxia due to shock due to multiple grievous injuries over body.

11. Besides this, there is another circumstance in the form of statement of one Santosh Shendage. He was called at that place by the deceased on 07/11/2019. The deceased had told him that the applicant had called him to that spot for measurement. However, this witness could not go there. In the evening, at about 5.00 p.m.,

the applicant called him and told this witness to switch off his mobile phone as there was some problem. This time is very close to the prosecution case regarding the time when the deceased was assaulted.

12. There are statements of witnesses Shivaji Kondiba Satpute and his son Damodar Satpute. Both of them have stated that on 07/11/2019 at about 4.00 p.m., the applicant approached them from his land. He was in frightened state. He requested both of them to drop him to Pune at the earliest. Damodar had infact dropped him to Male on his motorcycle. These statements are also incriminating. These witnesses speak about the occurrence at about the time when the deceased was assaulted. All these things put together do form a chain of circumstances which at this stage show the complicity of the applicant in the commission of the offence of murder.

13. In this view of the matter, though the applicant

is 65 years of age, considering the manner of assault and seriousness of the offence, I am not inclined to grant bail to the applicant.

14. The application is rejected.

(SARANG V. KOTWAL, J.)