

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

CRIMINAL BAIL APPLICATION NO.1294 OF 2020

Somnath Maruthi Bhujbal

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Aniket Nikam i/b. Mr.Vivek Arote, Advocate for Applicant.
- Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th JUNE, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.918/2019 registered with Lonikand Police Station, Pune, on 10/10/2019 under sections 302, 201, 364, 120-B, 109 r/w 34 of the Indian Penal Code. The Applicant was arrested on 15/10/2019 and since then he is in custody.
2. Heard Mr.Aniket Nikam, learned counsel for the Applicant and Mr.S.H. Yadav, learned APP for the State.

3. The prosecution case in brief is as follows;

The deceased Hanumant Aiwale was giving hand loans to people. It is alleged that he had given Rs.7,70,000/- to the Applicant by way of loan charging interest. The Applicant was not returning that amount and therefore there was enmity between them. It is alleged that the Applicant then hired other accused. He made arrangement for their stay at Jayesh & Lodging between 19/09/2019 and 27/09/2019 and entered into conspiracy to commit murder of the deceased. It is alleged that on 03/10/2019 accused Sumit Narke and Sumit Avghade bought a rope and pieces of cloth. The present Applicant and another accused Akshay Shelar made the deceased sit in an XUV car. He was taken to a secluded spot. While the Applicant was driving the car, both the aforementioned accused Sumit Narke and Sumit Avghade strangled him with a rope. The other accused Akshay Shelar followed them on a motorcycle and helped in disposing of mobile phone of the deceased. After that the dead body of the deceased was thrown in Bhima river by tying a heavy stone around his body with the help of pieces of cloth, which Sumit Narke and Sumit Avghade had bought.

4. FIR is lodged by brother of the deceased. The informant Shekhar Aiwale has stated that, he was told by wife of the deceased that from 03/10/2019 the deceased had left his house and had not returned. Initially the complaint about his missing was given. On 09/10/2019 the police officers attached to Lonikand Police station told the informant that a dead body was found in the river. The informant went there. He identified the clothes on the dead body. On this basis, FIR was lodged.
5. Mr.Nikam learned counsel for the Applicant submitted that the prosecution case is based on circumstantial evidence. The circumstances are almost non-existent. The motive alleged is not supported by any cogent material. The Applicant is supposed to have shown the spot where the dead body was thrown. But such evidence is not admissible as nothing was found at the spot pursuant to that statement. He submitted that the lodge owner's statement does not really incriminate the Applicant. At the most it shows that he had arranged for stay of other accused a few days prior to the incident. But there is no evidence against others as well.

6. Learned APP, on the other hand, heavily relied on the statement of lodge owner, to show that all the accused including Applicant were together few days prior to the incident and at that time, the conspiracy was hatched. The Applicant had made arrangement for stay of other accused. He submitted that there is evidence to show that Sumit Narke and Sumit Avghade had purchased pieces of cloth and a rope. He submitted that these circumstances are sufficient against the Applicant.

7. I have considered these submissions. With the assistance of both the learned counsel I have perused the charge-sheet. As far as the motive is concerned, the main evidence in that behalf, is that of the widow of the deceased Rupali. She has stated that the deceased had given Rs.7,70,000/- to the Applicant and the money was not returned. About 5-6 days prior to the incident she had heard the deceased having a discussion with the Applicant. Besides this statement, there is hardly anything to show that such amount was in fact

given and that the Applicant was not returning that amount. In any case, her version is based on one sided telephonic conversation, which she had heard from her house.

8. The other circumstance is of the lodge owner who has stated that on 18/09/2019 the Applicant had booked a room in that lodge. Thereafter about 3 to 4 boys had occupied Room No.8. The Applicant had arranged for their stay and food. According to this witness; the present Applicant, Sumit Narke and Akshay Shelar were visiting that room where those unknown boys were staying. According to him, name one of those unknown persons was Sumit Avghade. He speaks about the stay of those unknown persons till 27/09/2019. The alleged date of incident is 03/10/2019. Thus at the most, it shows that the Applicant was in touch with Sumit Narke and Sumit Avghade. However, there is hardly any evidence to show that conspiracy was in fact hatched. Only a vague inference can be drawn that all the accused were together, a few days prior to the incident.

9. The other circumstance is of purchasing nylon rope from witness Hemant Takte. In that context the police had brought Sumit Avghade to his shop and at that time, the shop owner had identified him as the person who had purchased the rope. This procedure adopted by the police, does not really inspire confidence because the proper course should have been holding of identification parade to enable this witness to identify the accused. Showing the accused to this witness does not take prosecution case any further in the facts of this case. Similar is the case of witness Satish Gundecha from whom two pieces of cloth were purchased by these two accused Sumit Narke and Sumit Avghade.

10. Besides this circumstance, there is one more circumstance which is in the form of panchanama and memorandum statement whereby the Applicant had shown willingness to point out the spot, where the offence was committed and where the dead body was thrown. This panchanama was recorded on 16/10/2019. The dead body was

already found on 09/10/2019. Therefore nothing was discovered or recovered pursuant to the statement given by the Applicant. Therefore it may not be covered under the admissible part of statement under section 27 of the Evidence Act. In this view of the matter, there is hardly any sufficient material against the present Applicant warranting his detention as an under trial prisoner. The Applicant deserves to be released on bail.

11. Hence, the following order :

ORDER

- (i) In connection with C.R.No.918/2019 registered with Lonikand Police Station, Pune, 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.)