

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2901 OF 2021

Manoj Kissan Shardul ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Akshay Bankapur for the Applicant.

Mrs.Anamika Malhotra, APP for the Respondent-State.

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CORAM : V.G.BISHT, J.

RESERVED ON : 24TH NOVEMBER, 2021

PRONOUNCED ON : 8TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 119 of 2020 registered with Upanagar Police Station, Nashik for offence punishable under Section 302 of the Indian Penal Code (the IPC).

2. The prosecution case in short is that Prashant Wagh (since deceased) quarreled with his wife-Sanju on 26th February 2020. Therefore, Sanju left her house alongwith her son. According to prosecution, the deceased called accused

Deepak Jayrappa Pujari and asked whether his wife and son had come to their house. The said accused tried to pacify him and explain but deceased was not in a mood to listen and abused him. Therefore, the said accused decided to kill him and hence called the present applicant over to his house. Later on, both of them visited a country liquor bar and at about 10.30 pm., they left from the said country liquor bar in an auto-rickshaw. Prosecution alleges that the said accused Deepak Jayrappa Pujari then brought an iron sickle and it is further alleged that he and the applicant both assaulted the deceased by means of sickle and caused his death.

3. Mr.Bankapur, learned Counsel for the applicant, submits that the entire case of prosecution is based on circumstantial evidence and there is no direct evidence against the applicant. Learned counsel also invited my attention to the statements of various prosecution witnesses and would submit that merely because the applicant was seen lastly in the company of the deceased will not be sufficient to infer that it was applicant alone who had killed the deceased. Investigation is completed

and the charge-sheet has been filed. The applicant is permanent resident of Nashik and therefore, there is no possibility of his fleeing from justice. Hence, the applicant may be enlarged on bail, urged learned Counsel.

4. Mrs.Malhotra, learned APP, on the other hand, also invited my attention to the statements of prosecution witnesses and emphasized that the applicant was lastly seen in the company of deceased. Having regard to the nature of offence, the application does not deserve consideration, argued learned APP.

5. Perused investigation papers. Needless to say, the prosecution case rests on circumstantial evidence i.e., evidence of last seen. It appears that the accused Deepak Jayrappa Pujari also confessed before his wife that he and the applicant had killed deceased. This amounts to extra-judicial confession. However, that extra judicial confession is limited to the extent of accused Deepak Jayrappa Pujari which again can be assessed by the trial Court.

6. Coming back to the investigation papers, I find the statement of Rajendra Vikram Nikam, owner of the Country Liquor Bar. According to him, on 28th February, 2020 at about 8.00 pm., the applicant along with two persons had visited his liquor shop. He purchased liquor and also consumed liquor in his shop.

7. Similar statement is that of Surindersingh Jogindersingh Saluja, who is also owner of Country Liquor Shop. It appears that he had installed CCTV camera in his shop and on the basis of CCTV footage, he found that the applicant had visited his shop at about 9.16 pm. He was identified by his Manager Naseem Mukim Shaikh. Again at about 9.21 pm, he saw from the CCTV footage the applicant along with his two friends. This statement is supported by Naseem Mukim Shaikh, who is the Manager of Surindersingh Jogindersingh Saluja.

8. From the above, what emerges is that the applicant was lastly seen in the company of deceased at around 9.21 pm along with co-accused. Admittedly, in respect of which, no

identification parade was carried out. I may incidentally point out here that the accused Deepak Jayrappa Pujari is enlarged on bail by this Court (**Coram : Revati Mohite Dere, J.**) vide order dated 1st October, 2021.

9. Having regard to the above discussion, the only circumstance appearing against applicant is that he was seen in the company of deceased along with co-accused. This circumstance alone in my opinion is not sufficient to *prima facie* conclude that the applicant was one of the assailant.

10. Viewed thus, a *prima facie* case for grant of bail is made out. Hence, the following order :

ORDER

(i) Applicant- Manoj Kissan Shardul shall be released on bail in C.R. No. 119 of 2020 registered with Upanagar Police Station, Nashik on his executing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein-above are *prima facie* in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(vi) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)