

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3137 OF 2021

CHANNAPPA SAIDAPPA HOSUR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

INTERIM APPLICATION NO.2507 OF 2021

IN

BAIL APPLICATION NO.3137 OF 2021

LAXMI RAMESH NIMBAL)...INTERVENOR

IN THE MATTER BETWEEN

CHANNAPPA SAIDAPPA HOSUR)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Manas N. Gawankar i/b. Mr.Mohammad Mulla, Advocate for the Applicant.

Mr.A.A.Palkar, APP for the Respondent – State.

Ms.Vilasini i/b. Mr.Jaydeep Mane, Advocate for the Intervenor.

AVK

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CORAM : V. G. BISHT, J.

**RESERVED ON : 23rd NOVEMBER 2021
PRONOUNCED ON : 6th DECEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.98 of 2021 registered with Police Station Akkalkot South, for offences punishable under Section 302, 201 read with 34 of the Indian Penal Code (IPC).

2 It is the case of prosecution that accused Saidappa Chandrashah Hosur is father of accused Channappa Saidappa Hosur (applicant). Informant and both accused are from same village and are known to each other. On 19th March 2021, at about 11.30 a.m., while the informant along with her husband Ramesh Sharanappa Nimbal (deceased for short) were proceeding towards their house, accused Saidappa Chandrashah Hosur stopped them and requested the deceased to accompany

him so that he could purchase banana and grapes. However, the deceased refused.

3 According to prosecution, the said accused, however, followed them up to their house and forcibly took the deceased with him on his motorcycle. At about 12.30 p.m., as it was lunch time, the informant's wife tried to contact the deceased but the latter's mobile was found switched off. At about 4.00 p.m, informant's brother-in-law and others told the informant that somebody had killed the deceased by means of a sharp weapon on the bullockcart road running in between Dudhani to Badadal. The informant, accordingly, lodged the report against the applicant's father, namely, Saidappa Chandrashah Hosur on 20th March 2021.

4 It then appears from the record that on 22nd March 2021, she again gave her supplementary statement wherein she contended that she came to know from others that the present applicant and his father had assaulted the deceased as the

applicant's father owed Rs.9 lac to the deceased and was avoiding to pay the said amount despite repeated demands of the deceased.

5 Mr.Manas Gawankar, learned counsel for the applicant, submits that while lodging the First Information Report (FIR) the name of the present applicant was nowhere mentioned. It is only on the basis of supplementary statement dated 22nd March 2021 that the name of the present applicant surfaced and he was arraigned as an accused. According to the learned counsel, the whole case is based on circumstantial evidence. Neither any weapon was seized at the instance of the applicant nor any blood stained clothes. The learned counsel also invited my attention to statement of various prosecution witnesses, which are also relied on by the learned APP and then would submit that those statements also do not, in any manner, further the case of prosecution. For all these reasons, the applicant deserves to be enlarged on bail, argued learned counsel.

6 Mr.AA.Palkar, learned APP, on the other hand, submits that there was motive to kill the deceased as the applicant's father had failed to return the amount of Rs.9 lac taken by him from the deceased. The deceased was persistently demanding the said hand loan amount, which the applicant's father never wanted to repay and for this reason, he along with his son killed the deceased. The learned APP also invited my attention to the statement of said prosecution witness which I would be referring shortly. There being no merit in the application, the same is liable to be rejected, argued learned APP.

7 Ms.Vilasini, learned counsel for the intervenor, adopted the same submissions as advanced by the learned APP.

8 Perused the investigation papers. Needless to say, the whole case of prosecution is based on circumstantial evidence. From the FIR it is clear that at around 12.00 p.m. of 19th March 2021, according to the informant, her husband was taken away

on a motorcycle by the applicant's father and thereafter she received information of the death of her husband. It is also pertinent to note that the name of the present applicant had nowhere figured at the time of lodging of the FIR.

9 This brings me to the statement of prosecution witness. The statement of Smt.Dhondavva Bhimsha Bajantri shows that on 19th March 2021, while she along with other villagers had been to the field, at about 4.30 p.m., they saw a person lying in an injured condition and had suffered injuries on his right arm and right side of face and on the back. There were bleeding injuries. The said person then whispered in Kannad language and asked water by saying that he had been beaten severely and further requested to connect him to agricultural land owner, namely, Devendra Mallad. Even the said injured person spoke with said Devendra Mallad and requested that he be sent to the hospital as he had been beaten severely. The statement of this witness further shows that after sometime two unknown persons came and one of them held the injured by

hand and another by his leg and dragged him. Later on they came to know that those persons were applicant and his father.

10 The remaining witness, namely, Smt.Kamlabai Basanna Talwar, Smt.Mahadevi Ambraya Devargi, Siddhava Chandappa Aalgi, Basanna Malappa Talwar and Shankar Revu Jadhav have unisonly dittoed the statement of above said witness, namely, Smt.Dhondavva Bhimsha Bajantri. Interestingly, none of these witnesses say that the injured had taken the names of either the applicant or his father as an assailant.

11 Similarly, there is statement of Devendra Chandrasha Mallad with whom, according to above said witness, the injured had spoken on his mobile. But surprisingly, this witness also nowhere says that the victim had taken the name of applicant as his assailant. He only informed this witness that he had been beaten and an arrangement should be made to take him to the hospital.

12 I may point out here that all the above said statements are also relied by the learned APP. As already noted, the case of prosecution is based on circumstantial evidence. There is no positive and incriminating circumstance or circumstances to prima facie establish that it was the applicant, who in any manner, helped his father to kill the deceased. Whatever, the significance of statements of those above stated witnesses is that they had seen the deceased being dragged from the field and not that they had seen them assaulting the deceased.

13 For the aforesaid reasons, in my considered opinion, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Channappa Saidappa Hosur shall be released on bail in Crime No.98 of 2021 registered with Police Station Akkalkot South, 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 Court proceedings regularly.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The interim application is allowed and stands disposed off accordingly.
- (viii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)