

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3508 OF 2021

SILISIDDHA @ CHIDANAND B. PUJARI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Kuldeep Nikam, Advocate for the Applicant.

Smt..M.M.Deshmukh, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 7th DECEMBER 2021
PRONOUNCED ON : 20th 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.221 of 2019 registered with Police Station Umdi, Sangli, for offences punishable under Section 302, 364A, 363, 201 read with 34 of the Indian Penal Code (IPC).

2 It is the case of prosecution that on 28th November 2018, at about 5.30 p.m., the informant's husband Mahadev Kanappa Pujari (deceased for short) was proceeding towards Village Lavanga. The prosecution alleges that on account of dispute over ancestral agricultural land, informant's nephew, namely, accused Silisiddha Bhutali Pujari (applicant) and Prabhuling Ogyappa Pujari made the deceased to sit on their motorcycle and took him to some unknown place. This First Information Report (FIR) came to be lodged by informant on the ground of suspicion only.

3 It appears from the record that during the course of investigation it revealed that as the deceased had refused to sell 40 acres of land, both the abovesaid accused in furtherance of their common intention, assaulted the deceased by means of sticks on his head, back and other parts of the body and thereby committed his murder.

4 Mr.Kuldeep Nikam, learned counsel for the applicant, at the very outset, submits that accused, namely, Prabhuling Pujari has already been released on bail by this Court (Coram : Bharati Dangre, J.) on 27th July 2021. The whole case is based on circumstantial evidence. The evidence on record is of hearsay nature. In such circumstances, the applicant also deserves parity and is entitled to be released on bail, argued learned counsel.

5 Smt. M.M.Deshmukh, learned APP, on the other hand, submits that the deceased was lastly seen in the company of the applicant. Even the dead body was recovered at this instance. The ground of parity cannot be claimed in as much as the other accused is released on bail on altogether different ground. There being no merit in the application, the same is liable to be rejected.

6 Perused the investigation papers. Admittedly, the FIR was filed against the applicant and co-accused on the ground of suspicion only. It is seen from the record that the supplementary

statement of informant i.e. wife of the deceased was again recorded on 8th December 2019 and on the basis of information given to her by none other than the police, she stated that it were applicant and other co-accused who had taken the deceased on their motorcycle on 28th November 2019 to a field and was then assaulted on his head by means of a stone and thereafter his dead body was stacked in a sack and thrown in a well belonging to one Ananda Patil. It is pertinent to note that this supplementary statement came to be recorded on 5th December 2019.

7 As against above, it is the specific case of prosecution that the deceased was lastly seen in the company of accused and for that purpose, the prosecution has placed reliance on the statement of Tatya Annu Bhosale, who is a shepherd. His statement shows that on 1st December 2019, at about 4.30 p.m., he was grazing his sheeps. Informant along with her son and others came and enquired whether he had seen the deceased during last 3 to 4 days. According to this witness, he then

informed that he had seen the deceased on 28th November 2019, at about 5.30 p.m., on the motorcycle of applicant and co-accused.

8 From the above statement it is very much clear that the informant was very much knowing on 1st December 2019, although from the mouth of prosecution witness Tatya Bhosale, that her husband i.e. the deceased was taken on a motorcycle by both the accused on 28th November 2019. Despite this knowledge, the FIR came to be lodged on 3rd December 2019, and more interestingly, the said FIR nowhere shows that the informant was given to understand by the said prosecution witness that her husband was seen in the company of applicant and co-accused. This is very serious infirmity, apparently appearing against the prosecution.

9 The next important circumstance relied on by the prosecution is that the dead body of the deceased was recovered at the instance of present applicant, by virtue of applicant's

disclosure statement given under Section 27 of the Indian Evidence Act. The said disclosure statement is dated 4th December 2019. It is also pertinent to note that the applicant was arrested on 4th December 2019 itself. However, it is not made clear on what basis and under what circumstances, the applicant came to be arrested on 4th December 2019. Admittedly, at his instance, a sack containing dead body of the deceased was recovered from the well, but having regard to the above serious infirmity, I have my own doubts about the said recovery panchnama.

10 Another accused was released on the same ground by this Court that there was only one statement of abovestated prosecution witness, namely Tatyā Bhosale, who stated in his statement that he had seen the deceased in the company of the applicant and the said co-accused. I do not dispute that the ground on which the said accused was released is altogether different than the ground of the present applicant, in as much as, according to prosecution at the instance of present applicant, the

dead body of the deceased was recovered. But then, I have expressed my reservations as to the conduct of the informant.

11 On appreciation of material on record, I find that except the circumstance of recovery of the dead body at the instance of the applicant, which is also shrouded with doubts, there is no other link connecting the applicant to the offence. Even otherwise, the case is based on circumstantial evidence and in these obtaining circumstances, it is not desirable to allow the applicant to languish behind the bars, for the reason that the trial may take its own time. No other criminal antecedents are forthcoming.

12 In view of above, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Silisiddha @ Chidanand B. Pujari shall be released on bail in Crime No.221 of 2019 registered with Police Station Umdi, Sangli on his executing PR.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 application is allowed in the aforesaid terms and stands disposed off accordingly.

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(V. G. BISHT, J.)

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