

NSC.

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

CRIMINAL BAIL APPLICATION NO.2297 OF 2019

Rajesh Rajnarayan Yadav

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. R. D. Suryawanshi, for the Applicant.

Mr. S. V. Gavand, A.P.P for the Respondent – State.

Police Inspector (Crime) – Sanjay Bende, Ambarnath Police Station, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 1st FEBRUARY, 2021

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-80 of 2018 registered with the Ambarnath Police Station, Thane, for the alleged offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that the prosecution case rests entirely on circumstantial evidence and that there are no incriminating circumstances to connect the applicant with the alleged offences. He submits that although the incident is alleged to have taken place 2 – 3 days prior to 10th April 2018, the statement of Vijay Arjanalakar to whom the applicant allegedly made an extra-judicial-confession, was recorded on 12th December 2018, after about more than 8 months of the alleged incident and after 3 days of applicant's arrest. He submits that in these circumstances the extra-judicial-confession is rendered suspicious/doubtful. He submits that apart from the aforesaid extra-judicial-confession, there are no incriminating circumstances in terms of either applicant being last seen with the deceased or recovery, as against the applicant. He submits that the applicant is in custody since 9th December 2018 and that investigation is complete and charge-sheet is filed. He further submits that the applicant has no antecedents.

4. Learned APP does not dispute the fact that apart from the extra-judicial-confession, there are no other incriminating circumstances, as against the applicant. He also does not dispute the fact, that the applicant has no antecedents.

5. Perused the papers. According to the prosecution, the wife of the deceased – Brindesh Prajapati i.e. Savitri Brindesh Prajapati was having illicit relations with accused No.2 – Kisankumar Kanojia. It is alleged that when Brindesh learned about the said illicit relations between accused No.1 - Savitri Brindesh Prajapati and accused No.2 – Kisankumar Kanojia, he started assaulting his wife – Savitri. It is alleged that pursuant thereto, the accused Nos.1 and 2 with the help of the applicant took the deceased - Brindesh Prajapati for drinking alcohol and when the deceased was intoxicated, the accused No.2 assaulted him with a knife and that the applicant also assaulted him. On 10th April 2018, the dead body of Brindesh Prajapati was found. On 8th December 2018, accused No.1 - Savitri Prajapati was arrested whereas the applicant was arrested on 9th December 2018. As far as motive is concerned, the applicant is not alleged to have any motive to kill the deceased – Brindesh. As far as last seen is concerned, there is no material to show that the applicant was last seen with the deceased, 2 – 3 days prior to the finding of the dead body. What is seen in the CCTV footage is that the accused No.2 and the applicant had gone to purchase alcohol on 8th April 2018 at about 6.00 p.m. The said circumstances *prima facie* cannot be said to be incriminating. There is no recovery of any weapon or bloodstained clothes, at the instance of the applicant. The only material *qua* the applicant is the alleged extra-judicial-

confession made by the applicant to the witness – Vijay Arjanalakar. The statement of Vijay Arjanalakar was recorded on 12th December 2018, after about 3 days of the arrest of the applicant. Vijay Arjanalakar in his statement dated 12th December 2018 has stated that sometime in May 2018, when he met the applicant, the applicant was looking upset. He has stated that when he asked the applicant the reason for being upset, the applicant disclosed to him that in April 2018, an untoward incident had taken place. The applicant is further alleged to have disclosed that the accused No.2 - and he had gone to Ambarnath to the deceased's room for a party; that during the said party, suddenly there was a quarrel between deceased – Brindesh Prajapati and accused No.2 - Kisankumar, pursuant to which, accused No.2 pulled out a knife and assaulted the deceased. The applicant, is also alleged to have stated that he too under the influence of alcohol assaulted the deceased and that he was regretting the same. The prosecution is not sure whether the applicant assaulted the deceased with any weapon or with fist and kick blows. *Prima facie* as noted above, this is the only material *qua* the applicant. Whether or not the extra-judicial-confession can be relied upon, is a matter which will be decided by the trial Court. The applicant is in custody since 9th December 2018. Investigation is complete and charge-sheet is filed. The applicant has no antecedents.

6. Having regard to the material on record, *qua* the applicant, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 30,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.