

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2766 OF 2019**

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P.
Tilak

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Nilesh Bhagwan Gite .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.S.B. Shetye with Ms.Priyanka Chavan for the applicant.
Mr.R.M. Pethe, APP for the State,

**CORAM: BHARATI DANGRE, J.
DATED : 25th MARCH 2021.**

P.C:-

1 On 1st September 2018, one Sunil P. Labhade, Agriculturist, resident of Nimgaon, Madh Taluka, Yeola reported that while he was carrying out the agricultural operations with his brother, with the aid of a tractor at around 3.00 p.m, he noticed a skeleton in his sugarcane field and he could recognize it of a female. This could be so ascertained on the basis of a piece of clothing i.e. Saree being wrapped around the existing portion of the skeleton, since the body was highly decomposed and some its part missing. This matter was immediately reported to police patil, who arrived there and the police was also informed about such a skeleton being found.

2 The police arrived at the spot and the Inquest was carried out and it was proposed to conduct a post mortem. However, the skeleton was in pieces and it was in such a tattered condition that it was not possible to shift the same to a hospital,

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for performing the post mortem. The Medical Officer, therefore, advised that the post mortem should be carried on the spot. Since on the said day, by the time the post mortem could be carried out, it was dark, on the next day in the morning i.e. 2nd September 2018, the post mortem was carried out between 10 am to 11 am. The post mortem report compiled in the charge-sheet when perused, reflect that the body was in a fully decomposed state and nothing could be identified. In column No.17, it is reported that no injury/wound can be seen on account of decomposition. All the columns in the post mortem are filled in by only one remark "Decomposed". The photographs of the skeleton taken on the spot are also placed on record and on perusal of the same, one can ascertain the stage of decomposition of the body making its identification difficult.

3 On the post mortem being carried, the PI requested the Sarpanch of Gram Panchayat, Nimgaon, Madh by his communication dated 2nd September 2018 on registration of the A.D, and after the post mortem, to perform the last rites. Accordingly, the PI was informed by the Gram Sevak that the last rites have been performed by the members of the Gram Panchayat.

4 Amidst these documents on record, a panchnama is compiled with the charge-sheet which is dated 2nd September 2018 and it record that the recording of the panchnama commenced at 12.00 am and concluded at 1.00 p.m. It is signed

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by the PI Yevla and two panchas named in the body of the panchnama. It record that six persons whose names are mentioned in the said panchnama are all residents of Paregaon, Taluka Sinnar, that they are close relatives of one Sarla Krushna Somase, aged 43 years, resident of Paregaon, who went missing since 22nd August 2018 and on the basis of the Saree, the petticoat and the blouse as well as the suncoat and scarf which was found on the remains of the body, the clothes were identified and it is recorded that the skeleton belongs to Sarla Krushna Somase. It is not however, known as to if the body was identified by these persons mentioned in the panchnama, then why it was not handed over to the relatives as the charge-sheet do not contain any documents to the effect that the body has been received by the persons named in the panchnama and the last rites were performed by the said relatives. On the contrary, the report of the Gram Sevak refer the said skeleton as merely being a lady and nowhere she is identified at the time when the last rites were performed. The case of the prosecution that she was identified to be Sarla, therefore, appear to be dubious.

5 The applicant came to be arrested along with the co-accused on 3rd September 2018 on the basis of suspicion, and case of the prosecution is that the accused were maintaining physical relationship with the deceased and she had demanded money from them and therefore, they decided to do away with her and on the date of incident, they had asked her to ride along with them on a motorcycle and on reaching the spot, they indulged

into sex with her and thereafter, killed her.

The statement of the son of Sarla and her brother are compiled in the charge-sheet. Her son Rushikesh whose statement is recorded on 5th September 2018 nowhere state that on the skeleton being identified to be belonging to his mother, it was taken in possession by the relatives and last rites were performed by them. He state that he was informed by the police that his mother was acquainted to the two accused persons and by providing money, they used to maintain physical relationship with her and she was demanding an amount of Rs.10,000/- and threatening that if amount is not paid, she would defame them in the Society and that is the reason why the two accused persons took her to a field belonging to Appasaheb Kale, established physical relationship with her and strangulated her by means of a scarf and in attempt to destroy the evidence, carried her mobile and her purse.

6 As per brother of Sarla whose statement is recorded, she was not reachable on her mobile no. 7030899908 from 22nd August 2018, and on 25th August 2018, when he himself contacted, her phone was not reachable. On 27th August 2018, he called on the mobile phone and someone answered, but immediately disconnected the phone. He visited her house which was found to be locked. As per the version of the son of Sarla on 20th August 2018, his mother had taken ill and she was taken to the Doctor and at that time, it was revealed that his mother was suffering from Immuno Deficiency Virus and his *mama* used to

take her to the hospital, but she did not take medicines regularly and therefore, he used to scold her. On 21st August 2018, he went to Nashik and on 22nd August 2018, he went to Manesar which was his work place and when he attempted to contact her from 24th August 2018, his mother was not traceable.

The brother's statement, however, is contradictory when he stated that for last five to six years, his sister was suffering from the incurable disease and she was taking treatment in Nashik Civil Hospital.

This contradiction in the two statements is glaring and if brother's statement is believed, then the prosecution case will fall to ground, if the case is accused were maintaining physical relations with her.

7 The prosecution has also compiled the CDR in the charge-sheet which establish that the applicant had established contact with her on her mobile number lastly on 22nd August 2018 at 17.20.51. Though the service provider of the mobile company was sought information about location of the two mobiles as well as to what point of time the number used by Sarla was active and also the tower location of the applicant and Sarla's mobile, but the same do not form part of the charge-sheet nor the statement of the service provider has been recorded and form part of the charge-sheet.

8 The entire case of the prosecution is based on circumstantial evidence and at this stage, prima facie, the charge-sheet poses the following questions being (i) Whether the

skeleton belong to Sarla (ii) Whether the death was homicide? and (iii) Whether the applicant is responsible for the death of Sarla ?

The charge-sheet is lacking in material, on the aforesaid points and unless and until it answer the first two points, the inference about the applicant being the cause for death of Sarla, is too far fledged.

9 On this premise, the applicant who is languishing in jail since 3rd September 2018 with all the possible material which the prosecution could collect, being compiled in the charge-sheet and when the police had access to him by way of his custody on remand. I see no reason why should he remain further incarcerated. Ultimately his fate depending upon the material collected in the charge-sheet, would be determined at the time of trial, however, on the basis of the circumstantial evidence which do not lead to a complete chain of circumstances, but in form of the sketchy material compiled in the charge-sheet, falls short of a case of circumstantial evidence. He is therefore, entitled to be released on bail. Hence, the following order :-

ORDER

- (a) The Applicant – Nilesh Bhagwan Gite shall be released on bail in connection with C.R No. 158 of 2018 on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer.
- (c) The Applicant should not tamper with evidence.
- (d) The Applicant shall mark his presence once in a month in the Sessions Court, Niphad where the trial is pending.

The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J