

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3522 OF 2019

Navnath Ramchandra Kamble	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Satyam H. Nimbalkar for applicant.

Ms.Veera Shinde, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th July 2021

PC :

1. This is an application for bail in CR No.66 of 2019 registered with Indapur Police Station for offences under Section 302 r/w 34 of Indian Penal Code.

2. The case of prosecution is that the informant is the owner of truck. He and his cousin Azar Sayyed were working as driver on the truck. On 13th January 2019 after loading animal fodder in their truck at Varangal, Andhra Pradesh, they proceeded to Indapur. They reached Indapur on 17th January 2019. The truck was not unloaded. Hence informant went to his village. On 21st January 2019 the informant's brother informed him that the truck has been unloaded. Informant told him to proceed to Nigadi, Pune. At 9.30 p.m he was informed that the radiator has bursted and his cousin would stay at Palasdev. The informant reached Palasdev and tried to locate his brother (deceased) but he could not locate him. On enquiry he learnt that his cousin had gone to sell the scrap with Ramnath

Kuchekar and Navnath Kamble. On search the informant found his brother lying injured. Stone was lying near his body.

3. The case of prosecution is based on circumstantial evidence primarily in the nature of last seen together. The applicant was arrested on 22nd January 2019. On completing investigation charge sheet is filed.

4. Learned counsel for applicant submitted that there is no direct evidence to show involvement of applicant in crime as there is no eye witness to the incident. Assuming the statements of witnesses recorded during the course of investigation to be true, at the most, it can be held to be a circumstance of last seen together. Further, it is also not strong circumstance. Statements of Balram Yadav, Tatyasaheb Tonde, Shahaji Tonde, Shankar Nale, Gorakh Sonawale only refer to the fact that at some point of time the accused were in company with the third person who was allegedly the deceased. The statements were recorded after the arrest of applicant. There are discrepancies in the statements. Balram Yadav has stated that three persons had visited his shop on motorcycle. Two of them were known to him being applicant and Ramdas Kuchekar (co-accused). Subsequently he came to know that same person was found dead. He did not state that he verified that it was the same person who was in company of the applicant and co-accused. Statement of Tatyasaheb Tonde also refers to the fact that three persons had visited him. He had seen three persons together. The third person was subsequently found injured and he was the same person who was in company with the applicant and co-accused. Learned counsel contends that theory of last seen together was held at about 8.30 p.m; but there is no

proximity in the incident and the last seen together. The statement of this witness was recorded on 23rd January 2019. Statement of Shahaji Tonde also refers to the fact that applicant and co-accused were accompanied by third person who was found subsequently injured. The statement was recorded on 23rd January 2019. Even he had seen them together at about 8.30 am and hence there is no proximity in the incident and in the circumstance of last seen together. There are similar discrepancies in the statements of other witnesses.

5. Learned APP submitted that there are consistent statements of witnesses which would indicate that victim was in the company of accused. There is CCTV footage which shows them together. The victim was found injured on the same day when he was found in company of the accused.

6. The applicant is in custody from the date of arrest i.e. 22nd January 2019. There is no direct evidence against applicant. The case is based on evidence in the nature of last seen together. The statements of witnesses were recorded after the date of arrest of applicant. Considering the nature of evidence further detention of applicant is not necessary. Case for grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.66 of 2019 registered with Indapur Police Station on executing PR bond in the sum of Rs.25,000/- with one or more

sureties in the like amount;

(iii) The applicant shall report Indapur Police Station once in three months on every first Saturday of the month between 11 am and 1 pm till further orders;

(iv) The applicant is directed to furnish provisional cash bail in the sum of Rs.25,000/- for eight weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)

MST