

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

**CRIMINAL APPLICATION NO. 485 OF 2019
IN
CRIMINAL APPEAL NO. 496 OF 2019**

Parimal Mukund Pawar	..Applicant.
Versus	
The State of Maharashtra	..Respondent

Mr. Harshad Bhadbhade a/w. Ms. Shweta Bhadbhade i/b. Mr. Amogh P. Khadye for Applicant/Appellant.
Mr. V. B. Konde-Deshmukh, APP for State/Respondent.

CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.
DATE : 27th APRIL 2022.

PC :

1. The applicant is seeking his release on bail pending the hearing and final disposal of Criminal Appeal No. 496 of 2019.
2. Heard Shri. Harshad Bhadbhade, learned counsel for the applicant and Shri. Konde-Deshmukh, learned APP for the State.
3. The applicant was arrested on 20/08/2017 in connection of offence of murder of one Suhas. The date of incident is 28/08/2017. The prosecution case is that the applicant was suspecting that the deceased was having affair with applicant's

sister and, therefore, he was holding grudge against the deceased. On the date of incident, in the morning at around 11.00a.m. when the deceased had gone to a spot known as Dadar Parya the applicant also went there and assaulted him with sickle and committed his murder. On this basis the offence was registered. The applicant was arrested on 28/08/2017.

4. Learned counsel for the applicant submitted that, there are following circumstances against him.

(i) There are witnesses who had seen the applicant in the vicinity of the spot where dead body was found.

(ii) Recovery of *Baniyan* and sickle showing blood group 'A' and;

(iii) Injury to the applicant himself allegedly caused during the incident.

(iv) Motive.

He submitted that, neither of these circumstances is incriminating and in absence of complete chain of circumstances, applicant's conviction cannot be sustained.

5. Learned APP relied on the same circumstances to contend that the chain of circumstances is complete and, therefore,

the offence is proved against the applicant. The offence being serious the applicant does not deserve to be released on bail.

6. We have considered these submissions and we have also perused the deposition of witnesses. So far as first circumstance of applicant having been seen in the vicinity is concerned; there are three witnesses in that behalf. PW-6 Anamika Kamble had heard the deceased saying loudly that he was going to that particular spot and she had seen the applicant also leaving his house after some time. The prosecution wants to rely on this circumstance to show that, since the applicant was aware where deceased was going, he had followed him to that spot. The next witness is PW-9 Ashok Pawar who had seen the applicant in that area of the spot at 11.15a.m. where the murder was committed. There is a statement of PW-17 Narayan Pawar who has deposed that after 10.45a.m. since he had missed his bus, he had requested the applicant to give him lift and the applicant had given him lift around that time in that area. These three witnesses speak of the applicant's possible presence in the vicinity.

7. Their depositions show that, this circumstance is very

weak piece of evidence. Nobody has seen the applicant in the company of the deceased. PW-6's evidence can be used to draw an inference only that applicant followed the deceased. So far as other two witnesses are concerned, their depositions at the most show that the applicant could be in the vicinity of the spot where murder was committed, but that by itself is not seriously incriminating circumstance.

8. Motive is also not sufficiently established. Whether it was strong enough is a matter for consideration. But that cannot be the sole basis for conviction.

9. So far as recovery of weapon and *Baniyan* is concerned, they were recovered from the forest and that place was accessible to all. Therefore, this circumstance also cannot form basis of conviction.

10. The other circumstance of injury to the applicant himself can be considered in the backdrop of submission that the applicant was an agriculturist, this injury was quite possible when he was attending to his crop in his agricultural field. This explanation is quite probable.

11. There is no other incriminating circumstance against the applicant. The deceased had suffered incised wounds. In absence of circumstance showing applicant's involvement, it is difficult to sustain conviction. Therefore, the applicant deserves to be released on bail during the pendency and hearing of Criminal Appeal No.496 of 2019. It is made clear that all these observations are made for the decision of this application. All these contentions are left open to be finally decided at the final hearing stage of appeal.

12. Hence, the following order:

ORDER

- (i) During the pendency and final hearing of Criminal Appeal No. 496 of 2019, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)