

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

BAIL APPLICATION NO.1326 OF 2021

Ashraf Iliyas Sayyed

... Applicant

V/s.

The State of Maharashtra and anr.

... Respondents

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Mr.Aniket U. Nikam i/by Mr.Amit Ratankumar Icham, Advocates for the Applicant.

Mr.A.A.Palkar, APP for the Respondent/State.

**CORAM : VINAY JOSHI, J.
DATE : 18th APRIL, 2022.**

P.C.:-

1. The applicant is seeking for regular bail in connection with C.R.No.298 of 2019 registered with Koregaon Park Police Station for the offences punishable under Sections 302, 201 r/w 34 of IPC.

2. Besides usual grounds, the applicant's learned counsel submitted that the case is totally based on circumstantial evidence, extra judicial confession which is a weak type of evidence. There are no witnesses who have seen the accused actually committing crime etc.. The State resisted the application by submitting police papers and pointing towards the statement of witnesses to the offence.

3. At the instance of report lodged by Police Officer, crime was registered. It is the prosecution case that the applicant was well acquainted with deceased lady. They had a dispute at relevant time. The applicant had allegedly assaulted deceased and pushed her from the terrace of the building resulting into her death. It is also alleged

that the applicant carried the dead body and caused to disappear the evidence.

4. With the assistance of both sides, perused police papers. By and large the evidence collected against the applicant is about extra judicial confessions, recovery in terms of section 27 of the Evidence Act, witnesses who have seen the applicant near the place of occurrence etc. The learned counsel appearing for applicant by placing reliance on the decision of the Supreme Court in case of **Vinod @ Manoj Vs. The State of Haryana**¹ would submit that extra judicial confession is a weak type of evidence. There can be no dispute about the said proposition of law. However, it is to be contextually read alongwith the attending circumstances. Since the case is totally based on circumstantial evidence, each circumstance is required to be considered. When the prosecution case is resting upon circumstantial evidence, the task of prosecution is more severe, as they have to establish the entire chain of circumstances. Needless to say that, if accused is able to break either of the link, it would be at the detriment of the prosecution.

5. There are two extra judicial confessions given to the men of confidence i.e. to the mother and sister by accused. Police have recorded statement of one security guard who has seen the applicant loitering near the building at relevant time. Moreover, he stated that after some time i.e. in late hours he saw the applicant carrying a lady with a boy on Activa two wheeler. Then there is a statement of witness namely Nikhil who has last seen the deceased in the company of applicant on the date of occurrence itself. Moreover, during course of investigation police have seized Activa scooter, some artificial jewellery and bloodstained clothes at the instance of accused.

6. It is argued that there is no link in between the seized material since jewellery was not identified by witnesses. Yet the evidence is to be recorded and therefore, at this juncture no conclusion can be drawn on that basis. *Prima facie* it reveals that bloodstains were found on the clothes seized at the instance of the accused.

7. The material which emerges from police papers *prima facie* indicates the prime role of applicant. The alleged offence may attract capital punishment. Though there is no eye witness to the occurrence, the law does not require eye witness to establish a crime. It depends upon facts and circumstance of each case. Undoubtedly, a crime can be proved on the basis of various circumstances. The offence is of serious nature. Possibility of tampering cannot be ruled out. Having regard the material placed on record, this is not a fit case to enlarge the applicant/accused on bail.

8. In view of that, the bail application stands rejected.

(VINAY JOSHI, J.)

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