

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

CRIMINAL BAIL APPLICATION NO.23 OF 2021

Ramesh Hunnu Rathod

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Salman Anwar Khan i/b. Patel Mohammad R. Jahangeer, Advocate for Applicant.
- Mr.P. H. Gaikwad, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 28th JANUARY 2022

(through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.I-32/2020 dated 08/03/2020, registered with Bhoiwada Police Station, under sections 302 r/w 34 of the Indian Penal Code.

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2. Heard Mr.Salman Anwar Khan, learned counsel for the Applicant and Mr.P. H. Gaikwad, learned APP for the State.

3. The prosecution story is that the Applicant and his family were residing in the house of one Tulshiram Badu Chavan who is deceased in this case. On one occasion Tulshiram asked money for drinking liquor. The Applicant refused and there was quarrel between them. Tulshiram then drove the Applicant's family out of his house and since then there was enmity between them. There are allegations that on 08/03/2020 in the early hours of the morning, the Applicant along with other co-accused Sanjaykumar Badanram Harijan @ Bihari and Sanjay Subhash Pawar, committed murder of Tulshiram by inflicting blow on his throat.

4. Learned counsel for the Applicant submitted that there is absolutely no evidence against the present Applicant. There is the alleged confession made by the Applicant to his own mother. It is not admissible. He submitted that there is recovery of clothes at his instance, but that is not incriminating piece of circumstance. He submitted that the Applicant deserves to be released on bail.

5. Learned APP opposed this application. He submitted that the C.A. report shows that there were blood stains of group 'AB' on the clothes recovered at the instance of the Applicant. The blood group of the deceased was also 'AB' as reflected from his clothes. He submitted that this is a strong circumstance. The Applicant had motive to commit murder and that he had made confession to his mother.

6. I have considered these submissions. As far as the confession of the Applicant is concerned, there is reference to such confession in the statement of Kamalabai Hunnu Rathod, i.e. the mother of the Applicant. She has narrated about the past quarrel between the Applicant and the deceased and as to how the deceased had asked the Applicant's family to leave his house. She has specifically stated that after his arrest she asked the Applicant in front of the police about the incident and at that time he had accepted that he had committed murder of the deceased. This statement is clear enough to show that the said

confession was made by the Applicant in the presence of the police officers. This is directly affected by section 26 of the Evidence Act. This section mentions that no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

7. In the present case the Applicant's mother has specifically stated that after the Applicant was arrested by the police, this witness had asked the Applicant about the incident when he had confessed about the crime. This confession is not admissible as per section 26 of the Indian Evidence Act.

8. The post-mortem notes show that there was a wound at the centre of the neck caused by a sharp weapon and the cause of death was 'Due to haemorrhagic shock due to neck injury.' No weapon was recovered at the instance of the Applicant. The weapon was found at the spot and therefore the Applicant cannot be directly connected with the weapon.

9. Therefore the only piece of evidence which remains to be considered is the blood stained clothes of the Applicant, which were recovered at his instance. The clothes were recovered from his own house, at his own instance on 12/03/2020. The C.A. report shows that there were blood stained of blood group 'AB' on the same clothes which were sent to C.A. However, the Applicant's own blood group was tested and the sample was not found suitable for grouping. Therefore blood group of the Applicant is not available as of today. The prosecution case has not ruled out that the blood stains on the Applicant's clothes were not his own. Evidence in that behalf is weak. There is absolutely no other evidence in the entire charge-sheet. In this view of the matter, further custody of the Applicant during entire period of trial cannot be justified. The Applicant deserves to be released on bail.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No.I-32/2020 dated 08/03/2020, registered with Bhoiwada Police Station, 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 in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)