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

BAIL APPLICATION NO. 3405 OF 2021

Lalit Lalchand Thakur

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Ajinkya Badar for the Applicant.

Mrs. P.P.Shinde, APP for the Respondent -State.

.....

CORAM : V.G.BISHT, J.

RESERVED ON : 20TH DECEMBER, 2021

PRONOUNCED ON : 28TH JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.388 of 2020 registered with Pimpri Police Station, Pimpri Chinchwad, Pune for the offence punishable under Sections 302, 201 read with 34 of the Indian Penal Code (the IPC).

2. One Amritkaur Gulzarsingh Viridi is the mother of deceased Jasbirsingh @ Billu @ Vicky Gulzarsingh Viridi. On

19th March, 2020, she lodged the report about missing of deceased and accordingly missing report bearing No. 63 of 2020 came to be registered by Pimpri Police Station, Pimpri Chinchwad.

3. During the course of enquiry, it revealed that accused Niraj Ashok Jangiani along with other co-accused, namely, Harjotsingh Ranjitsingh Lohit, Lalit Lalchand Thakur (applicant) and Yogesh Keshav Panjwani on account of earlier dispute, throttled the deceased and hit a stone on his head and thus committed his murder. Even the aforesaid accused with the help of fodder, set the body of the deceased on fire and destroyed the evidence.

4. Mr. Badar, learned Counsel for the applicant, at the outset, submits that the whole prosecution case is based on circumstantial evidence. There is no direct or indirect evidence against the applicant except the recovery of applicant's clothes. Although, the prosecution is relying on the statements of prosecution witnesses, since those

statements came to be recorded quite belatedly and there being no explanation to that effect, same cannot be taken into consideration. The prosecution has not been able to establish *prima facie* circumstance (s) from which it can be said that the applicant was involved in the death of deceased. Investigation is over. Charge-sheet has been filed. No criminal antecedents are forthcoming. In such circumstances, the custody of applicant is unwarranted and therefore, he deserves to be enlarged on bail, argued learned Counsel.

5. Mrs. Shinde, learned APP, on the other hand, opposes the submissions and invited my attention to the statements of Prabhu Mulchand Narsinghani and Rajkumar @ Aafat Mithailal Yadav in order to bring home point that the applicant was seen in the company of deceased before his death. There is recovery also. In such circumstances, there being no merit in the application, same is liable to be rejected, argued learned APP.

6. Perused investigation papers.

7. Admittedly, prosecution case rests on the circumstantial evidence. It is now well settled that the circumstances from which the conclusion of the guilt of accused is to be drawn should be fully established. Prosecution has pressed into service the statements of two prosecution witnesses.

8. First, Prabhu Mulchand Narsinghani, whose statement came to be recorded on 29th June, 2020. From his statement, it appears that on 7th March, 2020 at about 11.00 p.m., he had seen deceased in the company of applicant and other accused. There was a quarrel between them also.

9. Interestingly, although this witness had seen the incident on 7th March, 2020, his statement only came to be recorded on 29th June, 2020 i.e. after more than 3 and ½ months.

10. Similarly, the statement of Rajkumar @ Aafat Mithailal Yadav shows that on 8th March, 2020 at about 6.00 a.m., he had been to his cow shed. There he saw applicant and other co-accused. He even saw them taking away fodder and when

he objected, he was abused, threatened and asked go away from there by all the accused. He also saw burning body and the same was that of deceased.

11. It is quite surprising that despite witnessing burning of the dead body of deceased, this witness kept mum for a period of 3 and ½ months without any satisfactory explanation.

12. *Prima facie* and pertinently enough for want of explanation, huge delay in recording his statement is fatal to prosecution even at this stage.

13. As far as the recovery is concerned, it appears that applicant had shown his readiness to show the place where the dead body was burnt, vehicle used in the commission of offence and clothes he was wearing at the relevant time. However, there were no blood stains on the clothes of applicant.

14. Investigation is over. Having regard to the fact that the whole case is based on circumstantial evidence and no circumstance *prima facie* is established showing the involvement of applicant in the crime, the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Lalit Lalchand Thakur shall be released on bail in C.R. No. 388 of 2020 registered with Pimpri Police Station, Pune on his executing P.R. Bond in the sum of Rs. 25,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial Court proceedings regularly.

(iv) Bail before the trial Court.

(v) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance

with law, uninfluenced by the observations made in this order.

(vi) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)