

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

**CRIMINAL BAIL APPLICATION NO. 595 OF 2021
WITH
INTERIM APPLICATION NO. 2894 OF 2022**

Hitesh @ Guddu Kishor Ghoran ...Applicant

Versus

The State Of Maharashtra ...Respondent

....

Ms. Shubhangi Parulekar, Advocate for the Applicant.

Mr. M. G. Patil, APP for the Respondent – State.

....

CORAM : PRAKASH D. NAIK, J.

DATE : 13th OCTOBER, 2022

PER COURT:

1. The applicant is arrested on 22.07.2019 in connection with C.R. No. 615 of 2019 registered with Sangvi Police Station for offences punishable under Sections 302, 120-B read with 34 of the Indian Penal Code.

2. The FIR has been registered by brother of the deceased. It is alleged that on 20.07.2019, the first informant visited his shop. At about 08.30 pm, he went to Sangvi for purchasing article. He met his elder brother Nilesh Kherale at Sangvi. His brother told him to give call

Digitally signed
by
DNYANESHWAR
ASHOK ETHAPE
Date:
2022.10.15
13:26:21 +0530

after finishing his work. The first informant thereafter went to the premises of Aundh Hospital. He met Nilesh and his friend Bharat. He also saw Vishal Ashok Ghoran on motorcycle along with his cousin Hitesh @ Guddu Kishor Ghoran and Rohit Kishor Ghoran. Nilesh asked the informant as to why he was not meeting him. The first informant then left the place at about 09.30 pm. At about 11.30 pm Vishal Ghoran visited the house of first informant with his cousin Hitesh and Rohit. They inquired about Nilesh. The complainant was abused. He was told that there are some issues between Rohit and Nilesh. He was threatened with dire consequences. Father of informant came to the spot and told the aforesaid persons to leave the place. At about 12.30 Nilesh returned to house. He told the complainant that Vishal Ghoran, Hitesh Ghoran and Rohit Ghoran had quarreled with him. They have threatened him that he would be killed. The first informant then told Nilesh not to go out of the house and stay at house. However, Nilesh left the house. On 21.07.2019, the complainant went for purchasing articles. At about 04.25 pm, he received call from his friend that his brother Nilesh is lying in injured condition at the gate of Aundh hospital. The complainant proceeded to the said place and found that Nilesh was lying

on the floor with several injuries. He also noticed head injury. The pieces of tiles were found at the spot. Accused suspected that Nilesh was having love affair with the wife of Rohit Ghoran. He was threatened. Vishal Ghoran, Rohit Goran and Hitesh Ghoran acted in connivance and assaulted Nilesh. FIR was registered and investigation proceeded. During the course of investigation, statement of Dhananjay Sodanwar and other witnesses were recorded. Postmortem was conducted. On completing investigation, charge-sheet was filed.

3. The case is based on circumstantial evidence. There is no eye witness to the incident. The prosecution is relying primarily on two circumstances. First circumstances is motive and second circumstances is of last seen together.

4. Learned advocate for the applicant submitted that the motive attributed for committing crime is afterthought. There are no previous complaints. There are no strong circumstances to show involvement of the applicant. There is no eye witness to the incident. There is no incriminating recovery from the applicant. Statement of Dhananjay Sodanwar, who refers to the fact that the deceased was

seen in the company of the accused, was recorded belatedly. The applicant is in custody since last three years.

5. Learned APP submitted that the FIR indicate that there was enmity between the accused and the deceased. On the day of incident the complainant saw the accused at some distance when he met his brother (deceased). In the past, there was quarrel between deceased and the accused. The statement of Dhananjay Sodanwar refers to the fact that at about 01.00 pm he saw accused along with deceased on motorcycle. The deceased was sitting in the middle and the pillion rider was holding him. One of the accused was riding the motorcycle. CDR location shows that accused were in the vicinity of place of incident. There is motive for committing crime.

6. Undisputedly, the case is based on circumstantial evidence. There is no incriminating recovery. It appears that the assault was by using tiles. Pieces of tiles were lying at spot. The postmortem report refers to injuries on the body of the deceased. The case of the prosecution is based on the fact that there was motive to commit crime in view of previous dispute. There are no previous complaints. It is

also pertinent to note that the complainant met deceased at about 08.30 pm. He was in company with his friends. According to him he saw the accused at some distance. They were standing at the said spot. The brother of the complainant visited the house of the complainant. The accused also visited the house of the complainant and inquired about whereabouts of Nilesh (deceased). Incident had occurred on 12.30 hours. The victim left the house of the complainant. The statement of Dhananjay Sodanwar was recorded after about 8 days from the date of incident. According to him he saw the deceased in the company of the accused. It is not clear as to why his statement was recorded after 8 days. The applicant is residing in the vicinity of Aundh hospital. The incident had also occurred in the vicinity of the said hospital. Hence, circumstance of tower location relied upon by the prosecution may not be strong circumstance to show involvement of the applicant. The applicant is in jail for three years. There are no criminal antecedents against him. Hence bail can be granted to the applicant.

ORDER

- (i) Criminal Bail Application No. 595 of 2021 is allowed;

(ii) The applicant is directed to be released on bail in connection with C.R. No. 615 of 2019 registered with Sangvi Police Station on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish provisional cash bail security in the sum of Rs.20,000/- for a period of eight weeks in lieu of surety.

(iv) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

(v) The applicant shall not tamper with the evidence.

(vi) Both Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)