

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

**INTERIM APPLICATION NO.2979 OF 2021
IN
CRIMINAL APPEAL NO.1007 OF 2021**

Sanjay Sitaram Kadam

.... Applicant

versus

Union Territory of Dadra & Nagar
Haveli & Anr.

... Respondents

.....

- Mr. Balkrishna Joshi i/b. Mr. V. V. Pethe, Advocate for Applicant.
- Mr. H. S. Venegavkar, Advocate for Respondent No.1.
- Ms. G. P. Mulekar, APP for State/Respondent.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : 11th APRIL, 2022.

P.C. :

1. The Applicant is seeking his release on bail during pendency of final hearing and disposal of Criminal Appeal No.1007 of 2021.

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2. The prosecution case is that the Applicant and the

deceased Shivkumar Kanta Goswami were friends. Between night of 28/04/2018 and 29/04/2018 allegedly the Applicant committed murder of the deceased by assaulting him with the head of the ceiling fan which was found at the spot. The body was found locked inside the hotel of the deceased itself. The body was discovered on 02/05/2018 in the evening. P.W.3 Shivamkumar Amarnath Goswami lodged his FIR on the next morning on 03/05/2018. The investigation was carried out. The Applicant was arrested on 07/05/2018.

3. Learned Counsel appearing for the Applicant submitted that the case is based purely on circumstantial evidence. The circumstance of finding of blood stained clothes is not incriminating against the Applicant because the recovery is from open place accessible to all. There is no recovery of any other incriminating article at the instance of the present Applicant. There was no motive. Nobody had seen them together around the time of commission of offence.

4. On the other hand, learned APP relied on the following circumstances against the Applicant -:

- (i) The extra-judicial confession to P.W.2 Wasim Dilawar Shaikh.
- (ii) The evidence of P.W.6 Sandeep Dashrath Bholatkar, which indicates that in the intervening night between 28/04/2018 and 29/04/2018, the Applicant had gone to sleep in the hotel of the deceased where the murder was committed.
- (iii) Finding of the mobile handset with the Applicant. The handset belonged to the deceased.
- (iv) Recovery of the blood stained clothes of blood group 'B'. The same blood group was that of the deceased, though the Applicant was also of the same blood group.

5. Mr.Venegaonkar therefore submitted that all these circumstances complete the chain of circumstances against the Applicant. The evidence of Investigating Officer P.W.14 Harendrasinh Rathod shows that the motive was because one

lady used to make phone calls to Applicant on the mobile of the deceased. The deceased used to make fun of the Applicant and that was the cause of the incident.

6. We have considered these submissions. We have perused the evidence against the Applicant as well as the impugned judgment and order.

7. As far as the extra-judicial confession allegedly made by the Applicant is concerned, P.W.2 Wasim Shaikh's evidence shows that at that time, the Applicant was under influence of liquor. He had allegedly made that confession on 04/05/2018 at about 02.30 p.m. However the Applicant had not given details. He has only stated that he had committed a murder. P.W.2's cross-examination shows that P.W.2 had told the police that one Bharat had told him that the Applicant had committed the murder.

8. His cross-examination shows that the evidence of this

witness does have infirmities. Moreover, there is no plausible reason as to why suddenly the Applicant would make this extra-judicial confession to this particular witness. For around 1 ½ years prior to date i.e. 04/05/2018, the Applicant had not even met this particular witness. Then it becomes doubtful as to why suddenly on their meeting after such a long period, the Applicant would make this extra-judicial confession.

9. Another circumstance is of recovery of clothes as reflected in the evidence of P.W.7 Vijay Lokbahadur Gurkha, who is Pancha for such recovery. The evidence itself shows that the recovery was made from one garden, which was accessible to all. Secondly, the prosecution has not positively ruled out that the blood on the clothes was not that of the Applicant himself. That circumstance is weak.

10. The main circumstance is regarding the evidence of P.W.6 Sanjay Bholatkar. He was the owner of another hotel. He has stated that the Applicant used to sleep in his hotel and on

that particular night between 28/04/2018 and 29/04/2018, the Applicant had not slept in his hotel. The Applicant had taken keys of the hotel of PW.6. But had not slept there. On 29/04/2018 in the morning when this witness met the Applicant, he was told by the Applicant that he had slept in the hotel of the deceased in the previous night. If the murder was committed between 28/04/2018 and 29/04/2018 and if nobody knew about the murder, it was unnatural that the Applicant would tell him that he had gone to the spot of incident. It was not even his routine to sleep in the hotel of the deceased.

11. The investigating agency has not recovered the keys of the PW.6's hotel as well as keys of the deceased's hotel. The dead body of the deceased was inside the hotel of the deceased himself and the door was locked, but no key was found. It was certainly not recovered from the Applicant. Even key of PW.6's hotel is not recovered from the Applicant.

12. There is no evidence to show that the Applicant was

last seen together in the company of the deceased soon before the incident.

13. The only serious circumstance against the Applicant is about recovery of the mobile phone belonging to the deceased. Even regarding that circumstance, the Investigating Officer's evidence shows that the Applicant was having affair with a lady and that lady used to make phone calls on number of deceased and therefore the deceased's phone could be with the Applicant.

14. All these circumstances are weak in nature and do not form a complete chain of circumstances. However, it is made clear that these observations are made at this stage only for the consideration of application for bail. At the stage of final hearing of the Appeal, all these questions will have to be examined in detail. Based on this discussion, the Applicant deserves to be released on bail, during pendency and hearing of the Appeal.

15. Hence following order is passed :

ORDER

- (i) The application is allowed.
- (ii) During the pendency and final hearing of Criminal Appeal No.1007 of 2021, 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.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)