

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1033 OF 2021**

Shankar Siddha BurunguleApplicant

Versus

The State of Maharashtra ...Respondent

Mr. Satyam H. Nimbalkar a/w Mr. Abhishek V. Arote, Advocate for the Applicant.

Ms. Anamika Malhotra, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th SEPTEMBER, 2023.

P.C. :

1. By this Application, the Applicant is seeking bail in Crime No.103 of 2019 registered with Chinchani Wangi Police Station, Thane for the offence punishable under Section 302 of Indian Penal Code, 1860 ("IPC" for short).

2. It is prosecution's case that, complainant had lodged complaint stating that, his brother Shivaji Burungule was heavy drinker and he would take cash amount from hotel cash drawer

and used to bring alcohol. On 29th September, 2019 hotel manager informed him that, his brother Shivaji had met with an accident. As also doctor of Renushe hospital informed him that, his has brother had met with an accident and he had injured, he was admitted in hospital. Complainant went there and shifted his brother to other hospital, as there was injury to his head and chin. Thereafter, injured was brought to home by complainant. Injured Shivaji was shifted in bedroom, at that time his wife Ranjana and his niece Gauri were there. After sometime co-accused Ranjana called complainant as Shivaji was grasping and blood was oozing from his head. Then complainant took Shivaji to Bharati Hospital, Doctor checked him and declared him dead. The complainant asked co-accused Ranjana how deceased died, at that time Ranjana told him that, deceased Shivaji was abusing and assaulting her and in that scuffle she assaulted the deceased with wooden bomboo and strangulated him with the strips which were put on his injury. The complainant lodged the complaint against co-accused

Ranjana. In investigation it revealed that, complainant was the main accused. The complainant committed the murder of deceased by strangulating him. Hence, name of the complainant was added as a accused.

3. It is contention of learned counsel for Applicant that, prosecution's case is based of circumstantial evidence. Deceased was brother of complainant. He was heavy alcoholic. There is no incriminating material against the complainant. The doctor's statement shows that complainant had tried to take deceased at other hospital to give best treatment. The Applicant is behind bar more than four years. Investigation is completed and charge-sheet has been filed. Hence, requested to allow the Application.

4. It is contention of learned APP that, the complainant himself assaulted the deceased. In video statement of the deceased which was recorded in the hospital, he stated that, Applicant had assaulted him. The cause of death is by strangulation. In the statement, Dr. Renushe has stated that,

Applicant took the deceased with him. It shows that, deceased was last seen with the Applicant and he was in custody of the Applicant. It shows his involvement in the crime. If the Applicant is released on bail he may threaten the prosecution witnesses.

5. Learned APP further submits that, deceased had given oral declaration before compounder Shri. Dilakar Ismail Shaikh of Renushe Hospital that, complainant had assaulted him and he want to file case against him. Hence, requested to reject the Application.

6. I have heard both learned counsel. Perused FIR and charge-sheet.

7. It is prosecution's case that on 28th September, 2006 the deceased was found in injured condition to advocate Inamdar, he admitted him in Renushe Hospital. In statement of Dr. Abhishekh Renushe, he has stated that, deceased was admitted in his hospital for treatment and he had stated before this witness that when he was going to Ambakfata, in darkness

someone assaulted him and he also stated that he had to call his brother and accordingly this witness called Applicant. At the instance of Applicant iron road was seized. As per prosecution case cause of death is strangulation. No rope is seized. The compounder Dilakar Shaikh has stated that oral dying declaration was made before him by the deceased regarding cause of his injuries but deceased had not stated same fact's before the doctor. Infact he had asked doctor to call the Applicant, which shows contradiction's in the Statement of deceased. Prosecution case is based on circumstantial evidence. Co-accused Ranjana has been released on bail.

8. Investigation is completed charge-sheet has been filed. Applicant is behind bar for more than four years. Considering the above facts, his further detention is not required.

8. In view of above, I pass following order.

ORDER

(i) The Applicant be released on bail in
Crime No. 103 of 2019 registered with Chinchani

Wangi Police Station, Thane on furnishing PR bond of Rs.30,000/- with one or two sureties in the like amount.

(ii) After his release from jail the Applicant shall attend the Chinchani Wangi Police Station, Thane once in a month i.e. on every 1st Monday of the month between 11.00 a.m. to 3.00 p.m. till framing of charge.

(iii) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(iv) Application is allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)