

VRJ

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

BAIL APPLICATION NO.1400 OF 2023

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Rameshwar Alias Ram Motiram Garde ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Aniket U. Nikam with Mr. Varad Ozarkar i/by Mr. Aashish Satpute for the applicant.

Ms. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 2, 2023

P.C.:

1. This is an application under section 439 of the Criminal Procedure Code, 1973, in connection with C.R. No.I-55 of 2022 registered with Ghoti Police Station, District Nashik Rural for offences punishable under sections 302, 201, 120B, read with section 34 of the Indian Penal Code, 1860.

2. The prosecution case in short is as under:

The accused Nos.1 to 4 were having rivalry with the deceased as the deceased used to speak against the accused. It is also alleged that increase of influence of the deceased resulted in conspiracy to kill the deceased. Accordingly, accused Nos.1 to 3 in Skoda Superb Car took the deceased on 25th April 2022 at around 11:30 p.m. It is alleged that they parked their vehicle near Darna

Dam. Accused Nos.2 and 3 caught hold of hand and legs of the deceased. The applicant assaulted the deceased on chest and stomach. The deceased was assaulted on neck also. The death was instant in this. They disposed of body by putting it in vegetable bag, and thereafter, burnt it.

3. The applicant was arrested on 1st May 2022. The investigating agency recorded the statements of the witnesses. Charge-sheet was filed after completion of investigation.

4. The Sessions Judge by order dated 27th February 2023, rejected the application under section 439 of the Criminal Procedure Code, 1973.

5. Learned advocate for the applicant submitted that there are no eye witnesses. The case is based on circumstantial evidence. The circumstances alleged against the applicant are (i) Recovery of clothes of the accused; (ii) Extra judicial confession; (iii) Recovery of knife; and (iv) Motive.

6. It is submitted that the recovery of knife was not having blood stains. Clothes were not having blood stains. The knife was recovered from an open space. No blood stains were found in the car. The extra judicial confession is vague piece of evidence and, therefore, the applicant deserves to be released on bail.

7. Per contra, learned APP invited my attention to the extra judicial confession and submitted that the said extra judicial confession inspires confidence. There is material to indicate that the co-accused had used a cell phone of the witness to call the deceased along with accused persons. The recovery of clothes,

knife is sufficient to complete the chain of circumstances.

8. On perusal of the charge-sheet, it appears that the recovered knife neither contains blood stains nor the car seized, or clothes recovered have blood stains. Prima facie, it appears that the recovery of knife is from an open space. The evidentiary value of extra judicial confession needs to be adjudicated during the trial. However, it appears that the cell phone allegedly possessed by the applicant is not shown to be owned by the applicant. It was necessary for the investigating officer to investigate into the subscriber of the cell phone number. However, it appears that the investigating officer has not carried out investigation about the said aspect.

9. On overall consideration of the aforesaid factors and considering the fact that the applicant has been arrested on 1st May 2022, the applicant has made out a case for his release on bail. Hence, following order:

- a) The applicant be released on bail in connection with C.R. No.I-55 of 2022 registered with Ghoti Police Station, District Nashik Rural for offences punishable under sections 302, 201, 120B, read with section 34 of the Indian Penal Code, 1860, on furnishing P.R. Bond in the amount of Rs.25,000/- along with one or two sureties in the like amount;
- b) The applicant shall mark his presence before the concerned police station on first Saturday of every month between 11.00 a.m. to 2.00 p.m.;

- c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;
 - d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;
 - e) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - f) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case.
10. The bail application stands disposed of in above terms.

(AMIT BORKAR, J.)