

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

CRIMINAL BAIL APPLICATION NO.1887 OF 2022

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Akil Ahmed Kalimuddin Khan ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Satyaram Gaud, for the Applicant.
Ms. M. H. Mhatre, APP for the Respondent/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th AUGUST, 2023

PC.

1. On 16th October, 2020, applicant was apprehended in Crime No.506 of 2020 for an offence punishable under Sections 302, 201 r/w 34 of IPC.

2. After the investigation, the applicant along with co-accused is already charge-sheeted.

3. The prayer for grant of bail came to be rejected in earlier round of litigation.

4. Counsel for the applicant submits that the case of the prosecution is based on circumstantial evidence. According to him, the star witness in the case Waman @ Mataji Laxman Gavai, a watchman whose statement is recorded under Section 161 of CrPC

has failed to identify the accused. According to him, even if the weapon and the blood stained clothes of the accused are recovered, the blood group is inconclusive. In view of settled position of law, once it is inferred that the blood group on the clothes of the accused is inconclusive, he cannot be held to be liable for the prosecution.

5. His further contentions are, even if the statement of Afzal Abdul Kadir Shaikh, a witness recorded under Section 161 of the CrPC is appreciated, same cannot read to the inference that the applicant is *prima-facie* involved in the offence.

6. Learned APP would urge that even if the applicant is not identified in the identification period by the witness Waman @ Mataji Laxman Gavai, however, his statement under Section 161 of the CrPC sufficiently led to the investigation and arrest of the applicant.

7. According to him, the issue as to the blood stained on the clothes cannot be gone into at this stage of the proceedings. As such, prayer of rejection of the application.

8. I have appreciated the aforesaid submissions.

9. The fact remains that the applicant was apprehended on 16th October, 2020 and at his behest there appears to be discovery under Section 27 of the Evidence Act viz. weapons used in the

commission of crime. The weapon is not carrying any blood stains. Apart from above, the clothes of the applicant which were seized even if having blood stains, the blood group after the chemical analyze noticed to be inconclusive.

10. The division bench of this Court in the matter of **State of Maharashtra Vs. Bittu @ Gurumitsingh Sardar Singh Makan & Ors.** reported in **2006(1) Bom.C.R. (Cri.) 61** has held that even if the blood stained clothes are seized and the blood group is inconclusive, same cannot be considered as an incriminating circumstance against the accused persons.

11. In the case in prosecution, case is based on the circumstantial evidence. The applicant has already suffered incarceration for a period of more than three years.

12. Considering the nature of evidence, which is available on record against the applicant, it cannot be said that there is a strong case of conviction against the applicant. There is no criminal antecedent.

13. That being so, the application stands allowed.

14. Applicant is directed to be released on bail on furnishing PR bond of Rs.25,000/- with one or more sureties in the like amount.

15. Applicant shall neither influence the witnesses nor tamper with the evidence.
16. The application as such stands disposed of.

[NITIN W. SAMBRE, J.]