

SA Pathan

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

BAIL APPLICATION NO.3559 OF 2022

Monu Kisanlal Kumar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Vikas Shivarkar, for the Applicant.

Mr. Pandurang H. Gaikwad, APP for State-Respondent.

Mr. Sachin Thorat, API, Hadapsar police station.

CORAM : AMIT BORKAR, J.

DATED : JULY 26, 2023

P.C.:

1. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.') in connection with C.R. No.521 of 2021 registered with Dehuroad police station for offences punishable under Sections 302, 394, 397, 201 r/w 34 of the Indian Penal Code (for short 'IPC').

2. The prosecution case in short is that the present accused and co-accused Shivkumar having common intention, entered into room of the informant Someru Yetova Urav at construction site of Govind Builder in S. No.78, Kiwale to commit theft. They stolen amount of Rs.30,000/-, a small bag having Aadhar card of the informant and his wife deceased Saunday, a chain and two ear rings. Deceased saw them and she was making phone call to the builder. Then, present accused restrained her and pushed her and thereby she fell down from staircase upto ground floor. It is further

alleged that present accused lifted wooden stick and gave its blow on deceased Saundav. She became unconscious. He took out her mobile and pushed her in the pit of lift having water and thereby committed her murder. It is alleged that wooden stick was thrown outside compound of site and they destroyed evidence of commission of offence. It is also alleged that then present accused went to first floor and then took some money and ear rings from Shivkumar and told that if police caught any one of them, then he should take blame on himself and other should make attempt to see that the caught accused should be released from this crime.

3. The investigating agency thereafter completed the investigation, recovered cell-phone and pair of golden ornaments at the instance of applicant. After completion of investigation charge-sheet was filed. The applicant filed application under Section 439 of Cr.P.C. seeking bail before learned Sessions Judge. The Sessions Judge by order dated 13 October 2022 rejected the application.

4. Learned Advocate for the applicant submitted that, the case is based on circumstantial evidence. The circumstances alleged against the applicant are recovery of cell-phone and golden ornaments based on extrajudicial confession by three persons. Assuming the applicant assaulted the deceased, the act was not intentional. The applicant was arrested on 12 January 2022, there is no chance of trial to get over in near future. Hence, the applicant deserves to be released on bail.

5. *Per contra* learned APP pointed out circumstances of

recovery of articles used while committing crime from the applicant. Based on extrajudicial confession made by two witnesses, Rajesh and Mangal, there is likelihood of the applicant absconding as he is resident of Uttar Pradesh.

6. On perusal of the charge-sheet, it appears that the cell-phone possessed by the deceased was recovered from the applicant. The statement of witnesses indicate that the applicant intended to sale the said cell-phone along with golden ornaments, which were articles of offence of theft allegedly committed by the applicant. The statements of witnesses indicate that the statements of Rajesh and Mangal indicate that the applicant disclosed before them that he along with another co-accused went to commit theft and one women caught them while committing the offence. Hence, they gave blow of wooden stick on her head and pushed in the pit of water. It is also disclosed by another witness that the applicant told him that he intends to sale cell-phone and golden ornaments of the deceased. The statements of co-workers indicated that after commission of offence, the applicant went to his native place. The CDR placed on record, indicates use of cell-phone at Uttar Pradesh. Therefore, at this stage, the material against the applicant is sufficient to show his complicity in the offence. However, the prosecution needs to prove its case during trial.

7. On overall consideration of circumstances mentioned above, no case for release of applicant is made out. The bail application, therefore, stands rejected. No costs.

(AMIT BORKAR, J.)