
(2021) 11 BOM CK 0068
In the Bombay High Court
Case No : Bail Application No.546 Of 2021

Shrikant Vishnu Murhe

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 201

Citation : (2021) 11 BOM CK 0068

Hon'ble Judges : V. G. Bisht, J

Bench : Single Bench

Advocate : Aniket Nikam, Ameet A. Palkar

Final Decision : Allowed

Judgement

V. G. Bisht, J

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.446 of 2019 registered with Police Station Talegaon-Dabhade, District Pimpri-Chinchwad, for offences punishable under Section 302 and 201 of the Indian Penal Code (IPC).

2 It is the case of prosecution that on 15th April 2019 Kunda Namdev Gawde, Assistant Police Inspector, under instructions of Police Inspector Narayan Pawar visited Pawna river where she found a human body floating in the river. The said body was of Mangesh Bhagwat, husband of the informant.

3 It appears that on 20th April 2019 informant lodged the First Informant Report (FIR) suspecting that it was applicant who on account of previous enmity might have killed her husband.

4 Mr.Aniket Nikam, learned counsel for the applicant, submits that it is only on the basis of apprehension, name of present applicant came to be given to the police by the informant. The learned counsel also invited my attention to the so

called statements of eye witnesses and submitted how they differ from each other. There are no criminal antecedents. In such circumstances, the applicant deserves to be enlarged on bail, argued learned counsel.

5 Mr.Ameet Palkar, learned APP, on the other hand, opposed submissions by inviting my attention to the Advance Death Certificate and submitted that the cause of death was head injury and fracture skull with multiple bone fragments. The learned APP then pointed out the statements of eye witnesses namely, Ashwini Sachin Meshram, Sachin Bhauram Meshram and Sachin Sarjerao Gaikwad and vehemently submitted that all these witnesses had seen the applicant and other accused assaulting the husband (deceased) of informant. Motive was also there as there was previous enmity between the deceased and the applicant. For all these reasons, there being no merit in the application, the same is liable to be rejected, argued learned APP.

6 The statement of wife of the deceased is quite formal in nature and she simply has expressed apprehension that it is the applicant who might have killed her husband on account of previous enmity. What is necessary is to go through the statements of eye witnesses namely, Ashwini Sachin Meshram, Sachin Bhauram Meshram and Sachin Sarjerao Gaikwad. The prosecution has heavily relied on the statements of these witnesses. At the same time, learned counsel for the applicant has also assailed these statements as the statements inter-se are quite contradictory in its nature.

7 First statement is that of Ashwini Sachin Meshram. According to her, on 10th April 2019 at about 12.00 hours in the night, she and her husband Sachin were sleeping in the house. As she heard screaming, she got up and went near the window. She also found her husband seeing through the window and in the light of street lamp they saw accused Shrikant Vishnu Murhe (applicant), Pravin @ Barkya Ramesh Shedge and Swapnil Hridaynath Kale assaulting a person. They also saw accused Pravin and Swapnil had pinned down Mangesh @ Dadya Ananta Bhagwat (deceased) and applicant hitting with a cement pole on the head of the deceased. At the same time, accused Swapnil Kale and Pravin Shedge were assaulting by means of a stone on the head of the deceased. Thereafter all three ran away. She and her husband then went to sleep.

8 It is her further statement that after 2/3 days, accused Swapnil Kale visited her house and asked her whether they had seen anything from the window of her house and if at all they had seen anything, then if they revealed it to anybody, he would kill them. Therefore, having been frightened, they did not reveal. Lastly, she states that since police were enquiring with the locals and the wife of deceased was persistently asking her, she and her husband decided to reveal everything to the police, come what may.

9 A plain reading of statements of this witness gives anything but satisfaction. Assuming for the sake of argument that this witness and her husband, who is the next prosecution witness, had seen the incident from their window. But it is

highly unbelievable that after 2/3 days, as is claimed in the statement, accused Swapnil Kale visited their house and asked them as to whether they had seen anything from the window of their house. It is not at all the statement of this witness that while they were witnessing the incident, any of the accused had seen them so and that is why accused Swapnil Kale visited their house albeit after 2/3 days. This is one serious disturbing aspect of the statement. Secondly, there was no reason for the wife of the deceased to approach this witness and persistently ask her about the incident. How the wife of deceased got inkling of the matter that this witness might have seen the incident from her house. Therefore, prima facie, this statement is hard to believe.

10 Next statement is of Sachin Bhauram Meshram, who is none other than the husband of earlier prosecution witness namely, Ashwini Meshram. This witness also states on similar lines but with a difference. According to him, after the incident, continuously for 2/3 days the applicant and accused Swapnil Kale used to visit his tea stall and enquire as to whether he had seen anything, followed by threats. Now, wife of this witness nowhere says that her husband was also confronted by the applicant and other accused at his tea stall.

11 Lastly, his statement shows that since the police were visiting their locality, they decided to reveal the incident to the police. Unlike his wife, he does not say that the wife of the deceased was persistently asking his wife to tell about the incident. Thus, there is sea of difference between these two witnesses.

12 Lastly, it is Sachin Sarjerao Gaikwad who is his brother-in-law and according to him said Sachin Bhaurao Meshram had told him that Shrikant Vishnu Murhe, Pravin @ Barkya Ramesh Shendge and Swapnil Hridaynath Kale had seriously injured Mangesh @ Dadya Ananta Bhagwat on his head by means of stones and had fled away. His statement further shows that on 21st April 2019, he encouraged his sister and brother-in-law Sachin Meshram to apprise the police about the incident they had seen on 10th April 2019 and accordingly he took them to police station where they informed the police about the incident they had seen in the night of 10th April 2019.

13 There are two serious infirmities. Firstly, when this witness was told on 10th April 2019, at about 12 hours in the night about the incident by his brother-in-law, why he did not immediately or on the next day informed the concerned police station about the incident. His statement is recorded on 21st April 2019 and for almost eleven days he maintained an eerie silence. Second part of statement shows that it was he who encouraged his sister Ashwini Sachin Meshram and brother-in-law Sachin Bhaurao Meshram and took them to police station where they revealed the incident to the police. This is not at all the case of prosecution - neither that of those witnesses namely Ashwini Sachin Meshram and Sachin Bhaurao Meshram.

12 Thus, there are prima facie glaring inconsistencies amongst the versions of prosecution witnesses namely, Ashwini Sachin Meshram, Sachin Bhaurao

Meshram and Sachin Sarjerao Gaikwad. 13 The above being the nature of evidence on record, in my studied view, the present applicant deserves to be enlarged on bail with conditions. Hence, the following order :

ORDER

(i) Applicant - Shrikant Vishnu Murhe shall be released on bail in Crime No.446 of 2019 registered with Police Station Talegaon-Dabhade, District Pimpri-Chinchwad, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the Court proceedings regularly.

(iv) Parties to act on copy of this order duly authenticated by the Sheristadar of this Court.

(v) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(vi) It is clarified that observations made in this order are prima facie observations only for the purpose of deciding the instant bail application. None of the observations in this order shall be construed to mean any expression of opinion on merits and shall have no bearing on trial of the case.