

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

CRIMINAL BAIL APPLICATION NO. 1260 OF 2015

Mahesh Shivaji Adershe ..Applicant

v/s.

The State of Maharashtra. ..Respondents

WITH
CRIMINAL APPLICATION NO. 716 OF 2015
IN
CRIMINAL BAIL APPLICATION NO. 1260 OF 2015

Ashish Sudhir Gaikwad ..Applicant

IN THE MATTER BETWEEN

Mahesh Shivaji Adershe ..Applicant

v/s.

The State of Maharashtra. ..Respondents

Mr. Abad H.H.Ponda a/w. Arun Rajput i/b. Anjali Patil for the
Applicant in B.A.1260 of 2015.

Mr. Arfan Sait, APP for the Respondent-State.

Mr.V.B.Shirvarkar for Intervenor in APPP/716/2015

Mr.Sanjay Sabaji Rakshe, Police Constable, Paud Police Stn. present.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 21, 2016.**

P.C.

1. This is an application for bail filed by the aforesaid applicant who is facing trial for the offences under Section 302, 301, 366 r/w. 34 of the IPC, in Sessions Case No.403 of 0214 pending on the file of the Addl. Sessions Judge, Pune.
2. The case of the prosecution in brief is that the applicant along with other co-accused had committed murder of Swapnil Gaikwad and had tried to destroy the evidence by setting the body on fire. The mother of the deceased had lodged a missing report on 14.2.2014 alleging that her son had not returned home. On 17.2.2014 one Govind Sarose had reported that one half burnt body was lying at Gut No.251, Mauje Bhambarde, Mulshi, Pune.
3. The FIR was lodged by the brother of the deceased, pursuant to which the aforesaid crime came to be registered. The applicant was arrested on 23.2.2014. The crime was investigated and after completion of investigation, chargesheet has been filed and the case has been committed to the Sessions Court, Pune. The applicant had filed application for bail, which has been dismissed by the learned

Addl. Sessions Judge vide order dated 14.10.2014. Hence the present application.

4. The learned Counsel for the applicant has submitted that there is absolutely no material on record to show the involvement of the applicant in the aforesaid crime. He has stated that the deceased was not last seen in the company of the applicant. He has further stated that the knife recovered at the instance of the applicant was not stained with blood. The learned Counsel further stated that the missing report filed by the mother of the deceased does not indicate that the deceased was wearing spectacles. He has further stated that the missing report indicates that the deceased had worn slippers, whereas the body was identified on the basis of the shoes. He has stated that there is no proper identification of the body and that there is no material to link the applicant with the crime.

5. The learned APP submitted that the material on record prima facie indicates that the deceased was last seen in the company of the applicant. The knife was recovered at the instance of the applicant and the applicant had also sustained the injury on his hand. He has stated that the body was burnt and that the material on record

indicates that the applicant had purchased petrol a day prior to the incident. He has stated that the DNA test conclusively establishes the identity of the deceased.

6. I have perused the record and considered the submission advanced by the learned counsel for the applicant and the learned APP for the State.

7. At the outset, it may be mentioned that in para 4 of the application the applicant had made a categorical statement that no bail application was filed before this Court. The learned APP has placed on record copy of the order dated 7.4.2015 in Bail Application No. 2575 of 2015, a perusal of which clearly indicates that the applicant had filed application for bail, and after arguing the matter for sometime, the learned Counsel for the applicant sought leave to withdraw the application and the same was dismissed as withdrawn. The statement made in para 4 of the application is apparently a false statement and such a conduct would itself dis-entitle the applicant from discretionary relief.

8. Be that as it may, the records prima facie reveal that on 14.2.2014 during evening hours, the deceased Swapnil Gaikwad had

left the house and had not returned home. His mother, therefore, lodged a missing report on 15.2.2014 before the Pimpri Police Station. The records reveal that on 17.2.2014 one Govind Sarose had seen one half burnt body in Gut No.251 at Bhambarde. He had reported the matter to the police. Subsequently, the body was identified as that of Swapnil Gaikwad on the basis of shoes and spectacles. The DNA report prima facie establishes that the body which was found in Gut No.251 is that of Swapnil Gaikwad. The post-mortem report indicates that there were several injuries on the body and that the death of said Swapnil was due to cardio respiratory failure.

9. The motive for causing the death, according to the prosecution was that the deceased was having extra marital affair with the wife of the applicant. In this regard, the statement of Vijay Vishwas prima facie indicates that on 14.2.2014 at about 9 p.m. one boy aged about 25 years and one girl aged about 23 years had come to Tony Dhaba. Based on the CCTV footage, the girl was identified to be the wife of of the present applicant and the boy was identified as Swapnil Gaikwad, the deceased.

10. The records further reveal that while the applicant was in custody, the knife which was allegedly used for commission of the offence was recovered at his instance. The statement of Manoharsingh Lavane also prima facie indicates that the applicant herein had purchased the said knife on 13.2.2014 i.e. a day prior to the incident. The statement of Phiroz Nalband prima facie reveals that the applicant herein had purchased a bottle of petrol from the petrol pump wherein he was employed. The material on record thus prima facie reveals that the applicant is involved in committing the crime. The gravity of the offence would not entitle the applicant for bail. Releasing the applicant at this stage would hamper the trial.

11. Under the circumstances, and in view of the discussion supra the bail application is dismissed.

12. In view of dismissal of the bail application, application for intervention does not survive and the same is accordingly disposed of.

(ANUJA PRABHUDESSAI, J.)