

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3221 OF 2017.

Shivaji Shyamrao Gundale Applicant

V E R S U S

The State of Maharashtra Respondent

.....

Mr. S.J. Salunke, Advocate for applicant

Mrs. R.P. Gour A.P.P for respondent -State

.....

CORAM : V.K. JADHAV, J.

DATE : 16th AUGUST, 2017

.....

PER COURT :

This is an application for getting release on bail in connection with Crime bearing No. 15 of 2017, registered at Palam Police Station, District Parbhani. The earlier application with similar prayer below Exh.13 in S.T. No. 14 of 2017 came to be rejected by the learned Additional Sessions Judge, Gangakhed, by order dated 14-06-2017.

2] Brief facts, giving rise to the present application are as follows :-

On the basis of complaint lodged by one Satish Dnyanoba Bhande dated 23.01.2017, the aforesaid crime came to be registered. It has

been alleged in the complaint that, deceased Dnyanoba, who happened to be father of the complainant, had given his crane to the present applicant on rent. Further deceased Dnyanoba had also given certain amount to the applicant as hand loan for the purpose of marriage of his daughter. However, the applicant has not repaid the said loan amount nor paid the amount of rent. Deceased Dnyanoba was demanding the said amount repeatedly. On 10-01-2017 deceased Dnyanoba had been to the applicant and co-accused Vinayak for demanding the money. However, present applicant and his brother in law i.e. co-accused Vinayak had given threat to kill deceased Dnyanoba. On 16-01-2017 deceased Dnyanoba again went to village Aadgaon for demanding the said amount from the applicant. However, he did not return. On 21-01-2017 at about 8.30 a.m. cousin brother of the complainant informed to him on phone that dead body of deceased Dnyanoba was found floating on the water in the well in the agricultural field owned by the applicant. It has been alleged in the complaint that, on account of the said rent of the crane and hand loan, present applicant along with brother-in-law i.e. co-accused Vinayak and other co-accused persons invited deceased Dnyanoba in the field of applicant for drink's party and thereafter committed his murder and thrown his dead body in the well owned by the present applicant. Hence, present crime has been registered and applicant was arrested on 24-01-2017. Hence the application.

3] The Learned Counsel for the applicant submits that prosecution case is entirely rest upon circumstantial evidence. There is no direct evidence in this case. There is no chain of circumstantial evidence, except circumstance that dead body of the deceased Dnyanoba was found in the well situated at agricultural field owned by the applicant. There is no connecting evidence as such. The learned Counsel submits that during the course of the investigation, statements of certain witnesses shown to have been recorded belatedly, who have lastly seen the deceased in the company of the present applicant and other co-accused persons. The learned Counsel further submits that, on the same set of allegations and lastly seen theory, co-accused came to be released on bail. The learned Counsel submits that during the course of the investigation, weapon knife shown to have been recovered at the instance of co-accused Dnyanoba however, he is also released on bail. At the instance of the present applicant, certain sticks and sickle shown to have been recovered. However, there is no further connecting evidence that those weapons are used in the alleged crime.

4] The Learned A.P.P submits that there is prima facie strong evidence about homicidal death of deceased and his dead body was found floating on the water in well situated in the agricultural field owned by the present applicant. There are certain witnesses who have stated that they have lastly seen deceased

Dnyanoba in the company of present applicant and other co-accused persons. There is chain of circumstantial evidence and thus the application for getting release on bail is liable to be rejected.

5] On perusal of the investigation papers, it appears that though on 21st January 2017, the complainant came to know that dead body of his father found floating on the water in the well situated in the agricultural field of the present applicant, the complaint was filed on 23.01.2017. On perusal of postmortem notes, in column No.17 near about eleven antemortem injuries are mentioned and the provisional cause of death is shown as death due to pay-trauma . However, the age of the injuries and the time of death is also not mentioned in the postmortem. So far as the last seen theory is concerned, certain witnesses have stated before the the I.O. that they have lastly seen deceased in the company of present applicant and other co-accused on 18.01.2017. However, on the same set of allegations, co-accused came to be released on bail by the Court below. In view of the above and for the reasons that entire prosecution case rests upon circumstantial evidence, I am inclined to grant bail to the applicant. Hence, the following order :-

ORDER

- I. Application is hereby allowed.
- II. Applicant Shivaji Shyamrao Gundale be released on bail in connection with crime No. 15 of 2017 registered at Palam Police Station, Dist. Parbhani, on his furnishing personal

bond of Rs.25,000/- (Rs. Twenty Five Thousand Only) with one solvent surety of the like amount on the following conditions :-

A) The applicant shall not tamper with the prosecution evidence in any manner.

B) The applicant shall attend the concerned police station once in a week i.e. on every Sunday between 9.00 a.m to 11.00 a.m for a period of three months from the date of this order.

C) Bail before the lower Court.

III. Application, accordingly, disposed of.

[V.K.JADHAV, J.]

YSK/