

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

CRIMINAL APPLICATION NO.680 OF 2013

The State of Maharashtra ... Applicant
Vs.
1. Mayur Dipak Andhale
2. Suhas Gorakh Kalkhaire ... Respondents

**with
CRIMINAL APPLICATION NO.9 OF 2014**

Hemlata Dadaso Choudhar ... Applicant
Vs.
1. Mayur Dipak Andhale
2. Suhas Gorakh Kalkhaire
3. State of Maharashtra ... Respondents

Ms.Rutuja Ambekar, APP, for Applicant/State in APPLN/680/2013
and for Resp./State in APPLN/9/2014
Mr.R.A. Zade for applicant in APPLN/9/2014
Mr.P.S. Hagare, for Respondent Nos.1 & 2 in both applications

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 23, 2017

P.C. :

1. These applications are moved by the State and the wife of the deceased against the original accused Nos.1 and 2 for cancellation of their bail which was granted by order dated 11.9.2013 passed by the learned Additional Sessions Judge, Baramati in Bail Application No.544 of 2013. Both the

respondents/accused Nos.1 and 2 are prosecuted in C.R. No.134 of 2013 for the offences punishable under sections 302, 201 r/w 120B of the Indian Penal Code. In all, 5 accused were prosecuted. However, accused No.5 is dead. All the accused are on bail. The incident of murder took place on 20.7.2013 at 5pm at village Katphal, Baramati in one Innova car. The deceased Dadasaheb Choudar had insulted the respondent/accused Mayur Andhale in the presence of villagers 3 to 4 years prior to the incident. Thereafter, on 19.7.2013, he asked one Rohidas Sitaram Kuimbhar to get one Innova car to go out of station on the next day. Then, on 20.7.2013, in the morning, the respondent/accused No.1 alongwith accused No.2 and one Vinod Kamble and Anil, started proceeding in the Innova car. Witness Rohidas Sitaram Kumbhar heard that Vinod Kamble phoned Dadasaheb and called him. They talked something about the deceased Dadasaheb. They took the deceased in the car and asked witness Rohidas to drive the car. Thereafter, when the car was going on, Mayur Andhale strangled the deceased Dadasaheb with the help of the co-accused and Mayur Andhale assaulted him on his face and killed him. His body was thrown on the road side and Mayur took away all the belongings on the person of the body and then, he

was threatened that he should not disclose this to anyone. However, the offence was registered at the instance of the police head constable Anurath Deshmukh as mentioned above.

2. The learned Counsel for the applicants/accused has submitted that the applicants/accused are on bail since 11.9.2013 and they have not violated any condition of bail. He further submitted that the learned Judge has observed that sufficient time was granted to the police for investigation and the learned Judge has taken into account all the evidence which was placed before him.

3. The learned APP and the learned Counsel for the complainant submitted that the learned Sessions Judge did not take into consideration the material evidence which was available and was part of the chargesheet. It was further submitted that the impugned order is illegal and perverse and, therefore, this Court ought to set aside the same and cancel the bail of the accused.

4. Perused the FIR dated 25.7.2013 and the evidence before the Court as also the impugned order. The role of both the accused is specifically mentioned by the eye witness Rohidas

Sitaram Kumbhar which was recorded on 25.7.2013. The incident of murder took place on 20.7.2013. It is a well planned murder with previous motive. After considering the total evidence and reasoning given by the learned Judge, I do not want to interfere in the bail order of Respondent/accused No.2 Suhas Kalkhaire. However, the order granting bail to Respondent/accused No.1 Mayur Andhale, needs to be set aside.

5. Accused Mayur Andhale is the main perpetrator of the offence. He had called the deceased Dadasaheb. He had planned the conspiracy and he only strangled the deceased first and Suhas Kalkhaire helped him thereafter. Mayur assaulted Dadasaheb and tried to dispose of his body by throwing it with the help of Suhas. The learned trial Judge in his order did not discuss the evidence of eye witness at all. He has only observed that the police have seized the Innova car and, therefore, there is no recovery. However, he did not consider the other evidence, considering the statement of Rupesh Devchand Patle, who spoke about motive. He ought to have considered the evidence of a Jeweller, namely, Amol Shahane and also the evidence of one Prahlad Shesherav Saste. Accused/Respondent No.1 Mayur

Andhale has sold gold ring of the deceased to jeweller Amol Shahane through his relative Prahlad Shesherav Saste and also identification of a gold ring by the wife of the deceased. *Prima facie*, this establishes nexus of the respondent/accused Mayur Andhale with the offence.

6. It is not that in the case of murder, bail cannot be granted. The manner in which the offence is committed, pre-assault and post-assault conduct of the accused, criminal antecedents, motive, etc. are the weighing factors while using the discretion in bail. Moreover, the period which the applicant/accused has undergone in the prison and filing of chargesheet are also important factors. In the present case, bail was granted within 2½ months before filing of the chargesheet. Grant of bail is discretionary, however, this discretion ought not to have been used in favour of the accused Mayur Andhale. The order wherein material evidence is not considered, is perverse and arbitrary. Though the Courts are very slow in cancelling bail and depriving a person of his liberty, there are cases if the order is found perverse or arbitrary, it can be set aside.

7. In the circumstances, the impugned order of bail is modified and accordingly, the bail granted to Respondent/accused Mayur Andhale is cancelled. The respondent/accused Mayur Andhale shall be taken into custody forthwith. As regards the bail granted to respondent/accused Suhas Kalkhaire is concerned, the impugned order is maintained.

8. Bail Application stands disposed of accordingly.

(MRIDULA BHATKAR, J.)