

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

**BAIL APPLICATION NO.1743 OF 2016**

Sayyad Yunus Malik

.... Applicant

versus

The State of Maharashtra

... Respondent

Mr. Pravartak Pathak, Advocate for the Applicant.

Mr. S.S. Pednekar, APP for the Respondent/State.

**CORAM : MRS. MRIDULA R. BHATKAR, J.  
DATE : 03<sup>rd</sup> FEBRUARY, 2017.**

**P.C. :**

1. This application is moved for bail. The applicant/accused is prosecuted for the offence under section 302, 201 of IPC at C.R.No.18/13 at Poladpur Police Station, District-Raigad. The offence is registered on 16/04/2013 at the instance of one Krushna Babaji Sane a police party of Poladpur Police Station that the deceased Gurdas Laxman Sawant was killed on 16/04/2013 and his body was found in the land of one Daji Pandu Sane. Gurdas Sawant was working as a driver on the vehicle of the applicant/accused who is the owner of Strawberry Farm at

Nesarikar

Mahabaleshwar. From 16/04/22013 he was missing and thereafter his body was found.

2. It is the case of prosecution that as per the statements of other witnesses working on the farm of the applicant/accused deceased Gurdas took away the amount of salary of the workers and tried to run away and therefore the applicant/accused owner of the farm alongwith his manager Kapil Mulgaonkar and one Afsar Khan assaulted him with fist and blows and wooden rod and also strangulated him and killed him. Thus after the incident, the offence was registered against the applicant/accused and co-accused. However, the applicant/accused was absconding for more than three years. He was arrested on 24/06/2016. He remained in custody till 01/09/2016 and he was granted interim bail on health ground upto 01/12/2016. He was directed by this Court by an order dated 01/09/2016 that he shall surrender before this Court on 01/12/2016. On 19/12/2016 learned counsel for the applicant/accused made a statement that the applicant/accused did not surrender on 19/12/2016. Thereafter it was informed that

the applicant/accused was admitted in a private hospital at Kharghar, because he was very serious and the Doctor had advised him to take better treatment. When this application came up for hearing on 24/01/2017 as per the directions given by this Court he was shifted to J.J. Hospital for the better treatment. The report of the Medical Officer of the J.J. Hospital was also called. Pursuant to that, report of J.J. Hospital was received on 27/01/2017 and it was informed that a surgery was conducted on 25/01/2017 on the right thigh of the applicant/accused as he had a very bad abscess to his thigh. Today report is called and as per the said report though his hospitalization is required for complete drainage of abscess and removal of pigatil, there is no serious ailment which can affect his life at present. The said report is taken on record and the bail application is heard on merit.

3. The learned counsel for the applicant/accused submitted that there is no evidence against the applicant/accused. The applicant/accused is arrested on suspicion and the applicant has not committed any offence of murder. The learned counsel

further submitted that the incriminating material which transpires in the statement of witnesses is based on hearsay and therefore he prays for bail.

4. The learned prosecutor submitted that the applicant/accused was absconding for three years and this factor is to be considered by the Court and application for bail is to be rejected. The learned prosecutor further submitted that the submissions of witnesses and so also there is statement of co-accused which go against the applicant/accused. The applicant/accused has committed murder of Gurdas Sawant and there is evidence of last seen together.

5. It is the fact that the applicant/accused was absconding more than three years or the police could not arrest the applicant/accused for more than three years. However, this fact itself cannot be decisive while appreciating bail application.

6. Perused the Post mortem notes. The cause of death is shock due to multiple injuries to vital organs. The clause 17 of the post mortem notes disclose that there were multiple injuries

including the stabbed wound. It shows that the deceased was brutally assaulted and he succumbed to the injuries.

7. Perused the statements of witnesses namely Kondiba Baburao Chorge, Amberlal Badluram Yadav, Omprakash Madhailal Giri, Vitthal Kondiba Sakpal, Sagar Korgaonkar on whose statements the prosecution relies. All the witnesses are not eyewitnesses to the incident. Prim facie they do not have personal knowledge of the incident, but they have received the knowledge that the applicant/accused alongwith other two persons assaulted deceased Gurdas Sawant which resulted in his death. They received this information from one Dinanath Ramsahay Giri. However, police made Dinanath an accused. The statement of Dinanath cannot be read into evidence. The prosecution could not produce any other evidence against the applicant/accused, except the contention was made that as he was absconding, his bail be rejected. This cannot be a ground to reject the bail. Therefore I am inclined to allow this application for want of sufficient evidence. Hence following order:

**ORDER**

- (i) Application is allowed.
- (ii) The applicant/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.50,000/- with one or two solvent sureties in the like amount.
- (iii) The applicant/accused shall attend all the Court dates.
- (iv) The applicant/accused shall not tamper with the evidence or pressurize the complainant.

8. The application stands disposed of on above terms.

**(MRS. MRIDULA R. BHATKAR, J.)**