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

BAIL APPLICATION NO. 2577 OF 2017

Mahesh Vitthal Atkale

... Applicant

V/s.

The State of Maharashtra

... Respondent

WITH

BAIL APPLICATION NO. 2333 OF 2017

Ganesh Baliram Atkale

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. P.G. Jagdale for Applicant in BA No.2577/2017.

Mr. M.S. Mohite i/b V.S. Babbar for Applicant in BA No.2333/2017.

Ms. S.S. Kaushik, APP for State in BA No.2577/2017.

Mr. Ajay Patil, APP for State in BA No.2333/2017.

CORAM : A.S.GADKARI, J.

DATE : 6th DECEMBER 2017

P.C.:

1] These applications under Section 439 of Cr. P.C. are for bail in
CR No. 177 of 2013 dated 17.12.2013 registered with Pandharpur Taluka

Police Station, under Sections 302, 201, 363, 120B r/w 34 of the Indian Penal Code.

2] Heard the learned Counsel for the respective applicants and the learned APP. Perused the entire chargesheet.

3] It is the prosecution case that, Master Sanket Atkale, aged about 6 years was abducted on 3.9.2013 and murdered by the applicants and other accused persons over the dispute of landed property between the parents of deceased one on one side and the applicants, co-accused and their family members on the other side. The dead body of Master Sanket was found in the field of witness Narayan Poval in decomposed condition and was infested by maggots. After the witness expressed strong suspicion against the applicants and other accused, applicants were initially arrested on 6.9.2013. The Additional Sessions Judge, Pandharpur by its Order dated 11.6.2014 was pleased to release applicants on bail. As the Order passed by the concerned Additional Sessions Judge, Pandharpur was only an operative part of the Order and no reasoning was given therein, this Court took Suo Moto action in the matter and registered Suo Moto Application Nos.1 of 2015 and 2 of 2015. That by an Order dated 13.7.2017 this Court remitted back all the matters for fresh consideration on merits. The

applicants have been thereafter arrested on 22.9.2017.

4] The record indicates that out of total 7 accused persons in the present crime, 5 accused persons were subsequently released on bail. The applicants thereafter preferred fresh applications for bail which are rejected by the Trial Court by its Order dated 22.9.2017. In this background, the applicants have approached this Court for bail under Section 439 of Cr. P.C.

5] The prosecution has propounded mainly two circumstances against the applicants. Firstly motive and secondly applicants were seen sitting outside their house on the date of incident i.e. on 3.9.2017 at about 3.00 p.m. when the alleged incident of abduction of Master Sanket took place by two unknown persons.

As far as motive is concerned, as noted earlier, it is the case of prosecution that there is long standing dispute between the parents of Master Sanket on one side and the applicants, co-accused and their family members on other side over the agricultural fields/landed property and due to which it is alleged that applicants alongwith co-accused abducted Master Sanket and committed his murder.

As far as the second circumstance namely “last seen together” is

concerned, the applicants in fact were not seen in the company of deceased Sanket lastly. Prima facie it appears that the conduct of applicants in sitting outside their house in the afternoon was a natural phenomena and at this stage it cannot be considered as a circumstance of last seen together as far as applicants herein is concerned.

6] There is one more circumstance propounded by the prosecution i.e. intention expressed by the co-accused Pintu (accused No.5) informing witness Balaso Atkale that due to long standing dispute between the parties, he and his family members are fed-up and they will remove the hurdle of Janardan Atkale and others from their way. It is to be noted here that, the said circumstance does not relate to the applicants herein with it. It is further to be noted here that statement of Balaso Atkale has been recorded by the Investigating Agency after a period of 40 days from the date of incident and after a gap of 7 days from the date of arrest of applicants by the police. Prima facie it appears that the said circumstance is a weak piece of evidence against the applicants. Thus, prima facie, apart from motive, there are no other circumstance against the applicants.

7] In view thereof, the applicants can be released on bail.

Hence, the following Order:

(i) The applicants be released on bail in CR No.177 of 2013 registered with Pandharpur Police Station on their furnishing PR bond of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

(ii) After their release from jail, the applicants shall attend the concerned Police Station on 1st Monday of every month between 10.00 a.m. to 1.00 p.m.

(iii) Applicants shall also attend all the dates before the Trial Court.

(iv) Applicants shall not tamper with the evidence and/or influence the prosecution witnesses.

8] Both Applications are allowed in the aforesaid terms.

(A.S.GADKARI, J.)