

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

BAIL APPLICATION NO. 64 OF 2018

Shri. Tanaji Hari Pawar		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Santaram A. Tarale for the Applicant.
Mr. Y.M. Nakhwa, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 16th February, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 10th April 2013. It is the case of the prosecution that on 9th April, 2013, Sujay Udaysing Ghatge officiating as Assistant Police Inspector at Natepute Police Station lodged a report at the police station alleging therein that on 4th April 2013, he was informed about the accidental death of Subhash Ramesh Dixit. It was numbered as A.D. No.8 of 2013. His brother Shriram Dixit had informed the police that his brother

Subhash was missing since 2nd April, 2013. Missing Report No. 13 of 2013 was filed on 4th April 2013. The dead-body of Subhash alongwith his vehicle was found in the canal and hence accidental death was registered. The scene of offence panchanama was conducted and it appears that the vehicle must have slipped in the canal. The body was sent for autopsy. There were signs of decomposition. Column no. 17 of the post mortem notes indicated that there was diffusion swelling on neck, which was anterior thyroid region. There was diffused swelling on lips, cheeks, nose and forehead. The autopsy report showed that they were ante-mortem injuries. The cause of death was due to asphyxia. The viscera was preserved for chemical analysis. The death certificate was received on 4th April 2013, which showed that the cause of death was asphyxia due to strangulation. It was therefore clear that it was a case of homicidal death, hence the investigation was set in motion.

3 In the first information report, the first informant had stated that on 5th April 2013, he had recorded the statement of Shriram Dixit, who happens to be the brother of deceased. There was also an enquiry with Datta on 6th April, 2013. It had transpired that a fortnight before Subhash had gone missing, one person from Kasegaon namely Samadhan Mane was visiting their shop and office. Subhash had also accompanied him for dinner. There was an enquiry with Samadhan after Subhash had gone missing and he was giving

evasive answers. Samadhan was also not found in Kasegaon village. It had transpired that on the day when Subhash had gone missing and was subsequently found dead, he was carrying gold and silver in his car. He was not receiving the cell-phone since 9.00 pm. and Samadhan was missing from the date when the dead-body of Subhash was found. It is also alleged in the F.I.R. that people in Kasegaon village had disclosed to the investigating agency that Subhash was last seen in the company of Samadhan on the motorcycle and therefore, he was being searched. They had checked the call detail records. It had then transpired that Subhash was lastly seen in the company of Samadhan and the present applicant Tanaji, both resident of Pandharpur. That they had strangulated Subhash with a scarf. The wallet was found in the car of deceased Subhash, which belonged to the present applicant. The role of the applicant is writ large from the papers of investigation, his wallet was found in the car of the deceased. The CDR details would indicate that the applicant was in contact with Subhash on the day when he had gone missing. The statement of father of the applicant was recorded and he had confirmed that two friends of the applicant are Bablu Shaikh and Samadhan Mane. The sim-card which was being used by the applicant was taken in the name of his father and the same was confirmed from the statement of his father, which was recorded on 8th April 2013. There are witnesses to the effect that the deceased was seen in the company of Samadhan. In the above mentioned facts, the applicant does not

deserve to be enlarged on bail. The application being sans-merits stands rejected.

4 The applicant had taken a stand before the Sessions Court that the applicant herein happens to be a juvenile in conflict with law. However, the learned Sessions Judge has observed that the applicant had not submitted any proof in the form of birth certificate, birth register extract or school leaving certificate and therefore he was referred for ossification test. The report of the ossification test shows that the applicant was above 19 years old. The said stand was taken by the applicant only after his two previous applications were rejected by the Sessions Court as well the High Court. The trial was expedited and the charge is framed on 5th December 2013. The Sessions Court has observed that the applicant has filed the said application only to protract the trial.

5 The observations made hereinabove are prima facie in nature and are restricted to the application under Section 439 Code of Criminal Procedure and the trial Court shall not be influenced by the same.

(Smt. Sadhana S. Jadhav, J)