

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1499 OF 2020

WITH

CRIMINAL APPLICATION NO.217 OF 2021

GANESH BALAJI SIDALWAD

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.S. Jadhav, Advocate for applicant

Mrs. D.S. Jape, APP for respondent

Mr. B.G. Deshmukh, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th JANUARY, 2021.

ORDER :

1 Criminal Application No.217 of 2021 moved for assist to PP is allowed and disposed of.

2 Present applicant has been arrested, in connection with Crime No.289/2020 dated 08.07.2020 registered with Bhokar Police Station, Dist. Nanded, for the offence punishable under Section 302, 201 of the Indian Penal Code. The applicant has prayed for bail under Section 439 of the Code of Criminal Procedure, 1973.

3 Heard learned Advocate Mr. S.S. Jadhav for the applicant,
learned APP Mrs. D.S. Jape for respondent and learned Advocate Mr. B.G.
Deshmukh for assist to PP.

4 Perusal of the documents on record would show that the
investigation is over and charge sheet has been filed, therefore, further
physical custody of the applicant is not required for the purpose of
investigation. The applicant was arrested on 08.07.2020 and since then he is
behind the bars. He is aged 20. Perusal of the First Information Report
lodged by one Abhijit Prabhakar Kalyankar, who is the brother of the
deceased Vinay, would show that he has not made any direct allegations
against the present applicant. According to him, his brother Vinay went
missing since 03.07.2020. His body was found in the field of one Suraj
Jaywantrao Kalyankar on 07.07.2020. The body was highly decomposed.
The Post Mortem Report states the said fact. The P.M. Report shows there
were about seven external injuries. Some of which are chop wounds and
some are crush and traumatic amputation. Further, the internal examination
shows fracture to the skull. The probable cause of death is head injury,
however, the final opinion is reserved.

5 The evidence, further collected, shows that there is recovery of
the murder weapon at the hands of present applicant under Section 27 of the

Indian Evidence Act, however, it is not stated in the panchnama that it had any blood stains. Further, there appears to be discovery of clothes having blood stains from him, however, the C.A. report is awaited. Thus, no doubt, the death appears to be homicidal, but it is to be noted that though in the FIR it is stated that said Suraj Kalyankar informed the informant about the body in his field, yet, his statement has not been recorded. It is surprising, if Suraj or his family members had never visited their field between 03.07.2020 to 07.07.2020, they could not notice the dead body in their field.

6 The prosecution story appears to be that in the month of January, 2020 there was dispute between informant and present applicant. Deceased Vinay had intervened and had slapped present applicant and it is now stated by certain witnesses that it is the motive of present applicant to commit murder.

7 There is no direct evidence, that is, appearing from the charge sheet. That means, the case is based on circumstantial evidence, which will have to be proved by the prosecution beyond reasonable doubt. Therefore, taking into consideration the fact that the investigation is over and the case is based on circumstantial evidence, further physical custody of the applicant is not required. Therefore, he deserves to be released on bail. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Ganesh Balaji Sidalwad, who has been arrested, in
connection with Crime No.289/2020 dated 08.07.2020 registered with
Bhokar Police Station, Dist. Nanded, for the offence punishable under Section
302, 201 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (Rupees
Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees
Twenty Five Thousand).

3 The applicant shall not tamper with the evidence of the
prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 If he commits any breach of above terms of bail, the prosecution
is at liberty to move the Trial Court under Section 439(2) of the Code of
Criminal Procedure for cancellation of bail.

6 He shall not enter the jurisdiction of village Bhosi, Tq. Bhokar till
the conclusion of trial. He should reside elsewhere, and before submission of
bail papers, the applicant should give complete address of his proposed
residence with his mobile number. So also he should comply with the

requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

agd