

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

BAIL APPLICATION NO. 1226 OF 2020

Omkar Bandu Sanmukh. ... Applicant

V/s.

State of Maharashtra. ... Respondent.

Mr. Kuldeep Patil i/b. Mr. Shashank P. Borade, advocate for applicant.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV.

DATE : APRIL 26, 2021.

(Through Video Conferencing)

PC.

1 Heard the learned Counsel for the applicant and the
learned APP for State.

2 This is an application under section 439 of the Code of
Criminal Procedure, 1973 seeking enlargement on bail. The applicant
herein is arrested on 26/8/2019 in Crime No. 412 of 2019 registered
at Miraj Rural Police Station, Sangli for offence punishable under
section 302, 201, 384 r/w. 34 of the Indian Penal Code. Investigation
is completed and charge-sheet is filed on 20/11/2019.

3 It is the case of the prosecution that on 25/8/2019 Akash Pathrut lodged a report at the police station that in the year 2018, present applicant had filed a criminal case against his brother Sagar. That Sagar had absconded and was staying with his maternal aunt at Gokak in Karnataka for 2 months. The applicant and co-accused used to visit his house and demand Rs. 20,000/- for withdrawing the case filed against Sagar. On 8/8/2019 he was informed by Sagar that the present applicant had snatched his motor cycle in lieu of Rs. 20,000/-.

4 On 11/8/2019 Sagar had left the house in the morning at 10 a.m. but did not return home. They enquired with the relatives but the whereabouts of Sagar were not known. On 25/8/2019 the complainant and his family received a telephonic call from police informing them that on 17/8/2019 they have found an abandoned dead body near a small bridge at Vaddi. The complainant had been to the police station and identified the said dead body to be that of his brother Sagar, on the basis of his clothes and the photos shown by the police. He expressed his suspicion against the present applicant, his friend Mirasaheb @ Mirya and Irfan.

5 The cause of death as stated in the post mortem notes is death due to drowning. The body was in a decomposed state. It did not appear to be a case of homicidal death. According to the learned APP, the applicant had accompanied Sagar on 11/8/2020. They all had consumed alcohol and when they realised that Sagar was under heavy influence of liquor and that he could not balance himself, as he was disoriented, the present applicant and his friend Mirasaheb had taken him to a bridge at Vaddi. River had flooded due to heavy rains. The accused had pushed the deceased in flood water and had returned home. In fact, there is no direct evidence in the present case. Moreover, from 11/8/2019 to 25/8/2019, no missing complaint was filed.

6 Learned Counsel for the applicant submits that there was no motive to eliminate the deceased Sagar. On 29/8/2019, the applicant was taken to Suresh Wine Shop. Rajesh Pahuja, the owner of the shop after seeing the applicant has stated that on 11/8/2019, the applicant has visited twice to purchase wine and that he was his regular customer. He has stated that he was not accompanied by any one else. Much less, the charge-sheet does not show any material to

connect the applicant directly to the alleged offence.

7 Learned Counsel for the applicant submits that the cause of death is drowning and therefore, as on today, the prosecution has no material to show that Sagar had died a homicidal death and the possibility that he had accidentally fallen in the flood water cannot be ruled out.

8 Be that as it may, the applicant is in custody for more than one and half year and therefore, further incarceration is unwarranted. Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail in Crime No. 412 of 2019 registered at Miraj Rural Police Station, Sangli, on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall not tamper with the evidence.
- (iv) The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)