

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3324 OF 2021**

Sanjay Bassanna Gujale	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Ms. Vilashini Balasubramanian i/b Jaydeep Mane, for the Applicant.
Smt. P.P. Shinde, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

**RESERVED ON : 26th October, 2021.
PRONOUNCED ON : 15th November, 2021.**

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 66 of 2021 registered with MIDC Police Station, Solapur, District-Solapur for the offences punishable under Sections 302, 397, 411, 414, 120B r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that on 02/02/2021, the informant, a nephew of Rupa Bhaskar Shinde (since deceased), lodged an FIR to the effect that from 9-00 p.m. of 31/01/2021 to 9-00 p.m. of 01/02/2021

some unknown persons with a view to commit theft, broke open the iron almirah and committed theft in respect of gold ornaments and assaulted her on head by grinding stone (बरबंट) and committed murder.

3 Ms.Balasubramanian, learned Counsel for the applicant, submits that the applicant has been arrested only on the ground of suspicion. There is absolutely no evidence against him. The statement of bar manager and others are also not consistent. There is nothing to be recovered from the applicant. Since investigation is completed and charge-sheet is filed, no useful purpose will be served by keeping the applicant behind the bar.

4 Smt.Shinde, learned APP, on the other hand, opposed the submissions and invited my attention to the statements of Digambar @ Raju Chandrakant Gaikwad and Laxman @ Padum Ambadas Waghmare and emphasized, in the light of the statements that it can not be said that the present applicant had no role to play in the murder of the deceased. Having regard to the nature of offence, the present applicant does not merit consideration, argued learned APP.

5 Perused investigation papers.

6 If the charge-sheet is read carefully then it would appear that accused Ainali Riyaz Ahamad Chouki (A-1) alongwith his (accused's) wife Suhana Jainuddin Sayyad (A-4) were tenant of the deceased. A-1 and A-4 were in the need of moneys. Accused Mujammil Ahamad Chouki (A-2) is brother of A-1. All these three accused along with accused Sanjay Basanna Gujale (applicant) entered into a criminal conspiracy to commit murder of deceased and accordingly, on 01/02/2021 at about 00.30 hours A-1 and applicant entered into building while A-2 called deceased on the pretext of giving rent. While the deceased was going inside the house after taking the rent amount, A-1 and present applicant with the help of nylon rope strangulated the deceased and hit her head on the ground and thereafter put the dead body in the hall of house. They also removed gold ornaments from the house worth Rs.1,50,000/- and then fled away.

7 Three things are clear from the charge-sheet. Firstly, all the named accused in the FIR had agreed between themselves to commit the murder of deceased and thus hatched criminal conspiracy. Secondly, A-1, namely, Ainali Riyaz Ahamad Chouki and the applicant with the help of nylon rope strangulated the deceased and then hit her head on the ground and thirdly, they then removed gold ornaments worth

Rs.1.50 lakhs from the house of the deceased.

8 Now it is to be seen what evidence has been collected by the investigating officer to establish the prima-facie role of the applicant.

9 First of all if the postmortem report is seen then the cause of death is given “strangulation (unnatural)”. Thus, it is clear that the deceased died because of strangulation. Now, I would like to refer the statement of prosecution witnesses which have been relied by learned APP. The first statement is that of Digambar @ Raju Chandrakant Gaikwad recorded on 20/03/2021. His statement under Section 164 of Criminal Procedure Code (“Cr. P.C.” for short), however, came to be recorded on 07/04/2021 by Judicial Magistrate, First Class, Solapur. The first statement shows that on 31/01/2021, the applicant alongwith his muslim friend had been to the bar at 2-00 p.m. and was there till 8-00 p.m. When they were repeatedly asked to leave the bar, they said that they were waiting for the moneys and while leaving the bar they paid bill of Rs.1200/-. It is not made clear as to how this statement is useful from prosecution’s point of view. All that can be gathered from first statement of 31/01/2021 is that the applicant and his muslim friend were present in the bar till 8-00 p.m.

10 His second statement recorded under Section 164 of Cr.PC. is more or less on the similar lines.

11 The next statement is of Laxman @ Padum Ambadas Waghmare. His statement shows that he knows the applicant as the applicant is his good friend. According to him, on 31/01/2021 the applicant rang him up and told that he (applicant) and Amin Ali are enjoying drink at Palavi Bar and also asked him to join them. Accordingly, he went there at about 3-00 p.m. It is his further statement that after some time applicant told Amin Ali “आज गेम वाजवुया की” to which Amin Ali replied that “उधर आज शादी है नको”. According to this witness, he was there for about 30-45 minutes and then went away. Again at about 8-30 p.m. when this witness noticed missed call of applicant, he rang him up and asked him to come at Gurunanak Chouk. However, from there he was again asked to reach Kumtha Naka. When he went there he saw the applicant and said Amin Ali. From there they went to the house of Amin Ali and applicant also told that in that place only they would be doing a game (गेम करणार आहेत). When this witness asked what does he mean by that, the applicant replied that they would be committing a theft.

12 This statement of witness is in two part. First, the part of his

statement is in respect of his meeting with applicant and said Amin Ali at Palavi Bar around 3-00 p.m. on 31/01/2021 and the conversation which had taken place and as is extracted by me herein-above. Interestingly, the statement of bar manager i.e. Digambar @ Raju Chandrakant Gaikwad nowhere shows that at any time till the applicant and Amin Ali were there, this witness also joined them and remained there for some time. The second part of his statement indicates that applicant had revealed their plan of committing theft. However, it is not specifically made clear as to where that theft was to be committed and the manner thereof. Merely because the applicant told this witness that he and Amin Ali planned to commit theft does not mean that it was he along with others committed theft or no such inference can be drawn from the statement of this witness.

13 There is another statement of Laxman @ Padum Ambadas Waghmare recorded under Section 164 of Cr.P.C. by Judicial Magistrate, First Class (Court No.11), Solapur. According to this witness, on 01/02/2021 the applicant called him near Indian Tea House, Satrasta. He went there and asked the applicant whether he had committed the game on which applicant allegedly showed a photograph of a woman from his mobile. The eyes of that woman were popping out and face

had become black and blue. This witness got frightened and then went away. The prosecution has not made clear that whether said mobile was seized from the possession of the applicant and that the mobile was having a picture of none other than the deceased. From the statement it appears that accused-applicant had given extra-judicial confession but the veracity and truthfulness of the same can be considered at the time of trial and not at this stage.

14 From the above discussion, it is more than clear that prima-facie no overwhelming evidence is forthcoming to connect the applicant to the alleged offence. Moreover, investigation is over and charge-sheet has been filed. I do not find any utility in keeping the applicant behind the bar. Hence, inclined to allow the application. Hence, the following order.

ORDER

(i) Applicant- Sanjay Bassanna Gujale shall be released on bail in C.R. No. 66 of 2021 registered with MIDC Police Station, Solapur, District-Solapur, on his executing P .R. bond in the sum of Rs.25,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and

shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(v) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)