

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

CRIMINAL BAIL APPLICATION NO.745 OF 2021

Satish Baburao Gaikwad

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Satyavrat Joshi i/b. Mr.Nitin J. Mohite, Advocate for Applicant.
- Mr.S.H. Yadav, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th JUNE, 2021

(Through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.658/2020 registered with Wanawadi Police Station, Pune, on 10/07/2020 under sections 302, 120-B, 364, 201 r/w 34 of the Indian Penal Code. The Applicant was arrested on 29/07/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The prosecution case as mentioned in the gist in the charge-sheet is as follows;

The Applicant was in the business of sale of illicit liquor. The deceased Azan Ansari had given this information to police and therefore action was taken against the present Applicant. Similarly, co-accused Rohan was having a Pan Stall where he was selling Gutka. Azan had informed police about this also. The police had taken steps against Rohan. Therefore the Applicant and Rohan were holding grudge against Azan. On 08/07/2020, Azan was taken at a secluded spot by the Applicant and other accused namely Akash Jadhav, Ajay Gaikwad, Shrikant Sathe, Rohan Singh and Rohit Bansode. Rohit Bansode gave blow with a big stone on Azan's head. Others also joined him. The dead body was buried under a heap of stones.

3. The FIR was lodged by police constable Amol Pawar about finding of a dead body. Mother of the deceased had given complaint about missing of the deceased from her house. This complaint was given to Kondhwa police station on 09/07/2020. According to her, Azan had left her house at about 01.00 p.m. on

08/07/2020 and had not returned. Therefore the complaint was given on 09/07/2020. Subsequently, his dead body was found. The investigation was carried out. The Applicant was arrested.

4. Heard Mr.Satyavrat Joshi, learned counsel for the Applicant and Mr.S.H. Yadav, learned APP for the State.
5. Learned counsel for the Applicant submitted that, in the entire charge-sheet, there is no material against the present Applicant. The other co-accused viz. Rohan, Rohit and Ajay are granted bail by the Sessions Court. Therefore on principles of parity, the Applicant also deserves to be released on bail.
6. Learned APP opposed this application. He submitted that there was a call data record regarding calls between all the accused at the relevant time. For that purpose, supplementary charge-sheet is being filed. He submitted that there is strong motive for the Applicant to commit this offence.

7. I have considered these submissions and with assistance of both the learned counsel I have perused the charge-sheet. The supplementary charge-sheet is only about CDR which will, at the most, show telephonic conversation between all the accused. However, three accused Rohan, Rohit and Ajay are already released on bail. There is hardly any evidence against them as well. Therefore this CDR will not really help the prosecution case at the stage of consideration of bail, particularly on the ground of parity.

8. There are statements of some witnesses namely Jaid Ghodke and Danish Bagwan. They have stated that on 07/07/2020 at about 08.00 p.m. the deceased Azan had smoked Ganja with these two witnesses. Azan was with them till 11.30 p.m. Thereafter nobody had seen him. They have not stated that the Applicant or any other co-accused had abducted him. There is CCTV footage of the area outside the shop in the locality is seized. However there is no transcript of this CCTV footage. Therefore at this stage, there is nothing to connect the Applicant

with the abduction of the deceased. The post-mortem report shows that the deceased had suffered 16 injuries which were in the nature of contusions and abrasions. There were two incised wounds and the cause of death was given as 'head injury'.

9. There is no recovery at the instance of the present Applicant. There is recovery of mobile phone of deceased at the instance of the co-accused Shrikant Sathe. However, that is not an incriminating piece of circumstance against the present Applicant. The other co-accused as mentioned earlier are already released on bail. Therefore principles of parity applies in favour of the present Applicant. In this view of the matter, due to lack of sufficient evidence against the present Applicant, he deserves to be released on bail. His further custody during entire duration of trial is not warranted.

10. Hence, the following order :

ORDER

- (i) In connection with C.R.No.658/2020 registered with Wanawadi Police Station,

Pune, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)