

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1240 OF 2021**

Gaju @ Gajanan Kondiba Sarad .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Manoj B. Bagat for the Applicant.

Ms. Rutuja Ambekar, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 03RD AUGUST, 2021.

P.C:-

1. The Applicant is charge-sheeted in C.R. No.292 of 2020 registered with Shirur Police Station, Dist. Pune in Sessions Case No.398 of 2020 for the offences punishable under Sections 302, 201 read with Section 34 of the IPC. He is seeking his release on bail, on the ground that the charge-sheet filed against him contain material in the form of circumstantial evidence and the evidence is short of indicting him for death of the deceased Prakash, whose body was spotted by some villagers in the water below the bridge.

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2. The father of the deceased Prakash lodged a complaint that his son was addicted to liquor and on 26/04/2020, he left the house at 7.00 O' clock in the evening, after informing that he would come in the night. He did not return in the night and on the next day, it is the Applicant, a close friend of Prakash, who made a phone call to him and asked him whether Prakash had returned home. The Complainant informed him that he did not. The Complainant states that it is the Applicant, who informed him that the chappals of his son were found under a bridge and, therefore, he proceeded to the bridge, where the chappals were found. The Complainant allege that the Applicant is the assailant on the basis of the statement of co-accused Sachin Bodre, who is alleged to have told him that a scuffle had ensued between the Applicant and the co-accused Satish and his son, Prakash. Sachin had left the spot immediately. On being searched, the body of Prakash was found floating in the water under the bridge. The spot panchanama drawn reveals about the body being found under the bridge along with chappals of the deceased lying nearby. The statement of the brother of the deceased, Vijay Shendge is recorded on 30/04/2020. Other statements recorded are of one Shivaji Shendge, Sandip, Shendge, Rajendra Shendge and Balu Sudhan Bodre. All the aforesaid persons in their statements under Section 161 of the Cr.P.C. state that, for some or the other reason, when they were passing on the bridge, they could see a crowd gathered there. When people on the

bridge looked down, they could see a body floating and the body belonged to Prakash. The police hawaldar also present on the bridge along with Vijay. Vijay states that the present Applicant went into the water and brought the dead body of the deceased Prakash, which was carried to the hospital in an ambulance. The statement of one Dattatray Pawar recorded on 06/05/2020 reveals that on 26/04/2020, at around 6.30 p.m., when he was engaged in the agricultural activities, he noticed co-accused Sachin and the present Applicant near the bridge and they were walking towards the river. He, however, did not state that the deceased was in their company. However, in his statement recorded under Section 164 of the Cr.P.C., Dattatray Pawar states that he could not identify the two persons on account of the distance between them.

3. The postmortem report opined the cause of death on account of head injury. The co-accused Satish has been released on bail by the Sessions Court.

4. The case of the prosecution as compiled in the charge-sheet completely rests on the circumstantial evidence. Mere suspicion is not sufficient to indict him but the prosecution will have to establish each incriminating circumstances against the Applicant and, the circumstances should be so related and interlinked with each other that it would clearly pinpoint to the accused person and that he is responsible for causing the death of

the deceased. The material compiled in the charge-sheet at this stage falls short of this chain being conclusively established and it is for the prosecution to establish the same during the course of the trial. Considering that the Applicant is incarcerated for more than a year, and the case is completely based on circumstantial evidence, subject to the stipulation that the Applicant shall not tamper the case of the prosecution, he is entitled to be released on bail. Hence, the following order:

: ORDER :

- (a) The Applicant – Gaju @ Gajanan Kondiba Sarad, shall be released on bail in C.R. No.292 of 2020 registered with Shirur Police Station, Dist. Pune on executing P.R. bond to the extent of Rs.20,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicants shall report to the Shirur Police Station, Dist. Pune, on the first Monday of every month between 10.00 a.m. and 1.00 p.m.

5. The Application is disposed of.
6. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]