

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2746 OF 2021

SACHIN @ KANCHYA ROHIDAS CHAVAN)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Smt.Shubhangi Parulekar, Advocate for the Applicant.

Mr.Ameet A. Palkar, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 25th OCTOBER 2021
PRONOUNCED ON : 28th OCTOBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.502 of 2018 registered with Police Station Nigdi, for offences punishable under Section 302, 364, 201 read with 34 of the Indian Penal Code (IPC).

2 The informant is brother of Salman Sheikh (since deceased). According to the prosecution, Salman had left his house on 19th July 2018 at about 12.00 p.m. and did not return home. Therefore, on 21st July 2018 the informant gave a complaint about his missing to Yamunanagar Police Station. At the same time, Sonali Wakade @ Max (since deceased) also went missing and therefore, her relatives also lodged a complaint. It is further seen from the First Information Report (FIR) that when the informant and others were searching for Salman, his cousin Mohsin Shaikh told him that at about 9.00 p.m. he had seen both of them going with three to four persons from Azad Chowk. According to the prosecution, accused Ravi Walmiki, Vishal Walmiki, Gotya @ Nagesh Chavan were the persons who were named by Mohsin Shaikh. Accordingly, FIR came to be lodged against these accused and other 2/3 unknown persons. The dead body of Salman Shaikh was found on 23rd July 2018 whereas that of Sonali Wakade was found on 22nd July 2018.

3 Smt.Shubhangi Parulekar, learned counsel for the applicant, submits that the accused namely Prashant Shashikant Salvi who was seen in the company of the deceased has been enlarged on bail by this Court on 8th March 2021. The role of the present applicant is lesser than that of Prashant Salvi. Moreover, the name of the present applicant is nowhere taken by any of the witnesses. The learned counsel further submits that the cause of death could not be ascertained as the bodies were highly decomposed. The learned counsel lastly submitted that the Test Identification Parade so conducted is also highly defective. For all these reasons and on the ground of parity, the applicant deserves to be released on bail.

4 As against above, the learned APP does not dispute the above factual position which has been advanced in the form of submission by the learned counsel for the applicant. According to the learned APP appropriate order may be passed.

5 I have gone through the record. First of all, it may be noted that the cause of death of deceased Salman could not be ascertained as the dead body was highly decomposed. Similarly, the cause of death in respect of Sonali Wakade was reserved till arrival of the Chemical Analyser's Report. As on the date of hearing arguments, the cause of death of either of the deceased was not before me.

6 I have also gone through the Memorandum of Test Identification Parade. On perusal of the same, it appears that the present applicant was identified by prosecution witness Kavita Vikram Gaikwad on 31st August 2018. Interestingly, I may note that her statement under Section 161 of the Code of Criminal Procedure came to be recorded on 29th July 2018. It means after more than one month she was asked to participate in the Test Identification Parade. According to the prosecution, the present applicant was duly identified by her in the said Test Identification Parade. What I am concerned with is her conduct as reflected

from her statement under Section 161 of the Cr.P.C. recorded on 29th July 2018. From the reading of her statement it would be seen that she was acquainted only with accused Vishal Walmiki and further that on 19th July 2018 said accused Vishal Walmiki along with his four to five companions had gone in an autorickshaw along with the deceased Sonali and Salman. She nowhere says in her statement that either she was knowing the present applicant or her statement does not show the features, colour, height etc. of the persons noted by her, who were allegedly along with the accused Vishal Walmiki. This being so and the fact that the Test Identification Parade took place almost after more than one and half month of the date of the incident, I have my own doubts as to whether she would have been in a position to identify the present applicant. I am, therefore, in agreement with the learned counsel for the applicant that the Test Identification Parade appears to be not reliable vis-a-vis the present applicant and that too at the instance of the prosecution witness Kavita Gaikwad.

7 Having regard to the above discussion and the fact that no other incriminating circumstance in the nature of recovery or other incriminating factors is forming a part of the record against the applicant, the applicant has made out a case for consideration, more so, when the investigation is already over and the charge-sheet is filed. Hence the following order :

ORDER

- (i) Applicant – Sachin @ Kanchya Rohidas Chavan shall be released on bail in Crime No.502 of 2018 registered with Police Station Nigdi, on his executing P.R.Bond in the sum of Rs.30,000/- with one or two sureties in like amount.
- (ii) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (iii) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)