

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

CRIMINAL BAIL APPLICATION NO.2902 OF 2021

Chetan Nandkumar Aawale

...Applicant
(Orig. Accused no.5)

Versus

The State of Maharashtra

...Respondent

Mr. Meghdeep M. Oak, for the Applicant.

Ms. P. P. Shinde, A.P.P for the Respondent – State.

PSI – B. R. Yadav, SDPO Department, Satara City Police Station, Satara, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 21st SEPTEMBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant (original accused No.5) seeks his enlargement on bail in connection with C.R. No. 286 of 2021 registered with the Satara City Police Station, Satara, for the alleged offences punishable under Sections 302, 201 and 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that there is absolutely no material on record to connect the applicant with the alleged offences. He submits that the CDR only shows that the applicant was in

the village, which cannot be said to be incriminating, inasmuch as, the applicant is a resident of the said village. He submits that the phone call made by the applicant to the accused No.4 – Umesh Kambale (father of accused No.1) after the incident also cannot be said to be incriminating, inasmuch as, the applicant and the accused were friends and hail from the same village. He submits that the applicant is a student pursuing his education and that there are no antecedents against him. He further submits that since investigation is complete and charge-sheet is filed, further detention of the applicant is not warranted.

4. Learned APP opposes the application. Learned APP fairly submits that apart from the CDR and phone call made to the accused No.4 (father of accused No.1), there is no other material in the form of last seen or recovery, as against the applicant.

5. Perused the papers. According to the complainant – Usha Shivdas, she had gone to Shahu Vegetable Market with her husband to sell onions and other vegetables at 10:00 a.m. on 5th April 2021. She has stated that at about 1:00 p.m. her son, Akash (deceased) came to the shop to help her sell the vegetables. She has stated that after she closed the shop at 8:00 p.m., Akash (deceased) told her to go ahead and have dinner and that he

would return after some time. The complainant has further stated that since Akash (deceased) did not return home till 10:00 p.m., she called Akash (deceased), who told her that he would come in 5 minutes. The complainant has further stated that at about 10:30 p.m., when she called Akash (deceased), the said call was answered by Sangram Ranpise (original accused No.3) who informed her that he would leave Akash (deceased) in 5 minutes. Thereafter, Akash (deceased) neither returned home nor answered the calls. It is further alleged by the complainant that at about 11:45 p.m., her daughter called Akash (deceased) and that Akash (deceased) informed her daughter that he would come home in 5 minutes, after which everyone fell asleep. According to the complainant, since Akash (deceased) did not return home till next morning and his phone was coming switched off, they started looking for Akash (deceased). The complainant learnt that a half-burnt body was found near Shahu Vegetable Market near Khandoba Mal. On going near the dead body, the complainant identified the same, as being of her son Akash (deceased), on the basis of the articles. Accordingly, an FIR was lodged as against unknown persons. During the course of investigation, accused Nos.1 to 3 came to be arrested. On the basis of the tower location, accused No.4 was also arrested on 5th June, 2021 and the applicant was arrested on 8th June 2021. The prosecution case rests on circumstantial evidence. Admittedly,

the applicant had no motive to do away with Akash (deceased). There is no evidence of either last seen or recovery, as against the applicant. Merely because the applicant's tower location was in the village would not be sufficient to show the complicity of the applicant, inasmuch as, the applicant himself is a resident of the same village. Similarly, the phone call made by the applicant to accused No.4 – Umesh Kambale (father of accused No.1) at 11:45 p.m., *prima facie*, also cannot be said to be incriminating. The prosecution's allegation that the applicant disposed of the dead body of Akash (deceased) is not borne out by any material on record. It appears that witness – Sharukh Shaikh had stated that there was an altercation between the applicant and Akash (deceased) on the said day at about 10:00 p.m., however, the said witness has stated that after the quarrel, the applicant had left the spot. It is pertinent to note, that Akash had spoken to the complainant and his sister, after 10:00 p.m. There is no material on record or evidence to show that the applicant and Akash (deceased) had come together thereafter. Investigation is complete and charge-sheet is filed. The applicant has no antecedents.

6. Considering the aforesaid material *qua* the applicant, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 20,000/- with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) The applicant shall not enter the jurisdiction of Satara City Police Station, Satara, until further orders, except for the purpose of attending the police station as mentioned in clause (ii);
- (iv) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person

concerned with the case;

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. The application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.