

Anand

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

BAIL APPLICATION NO. 2972 OF 2019

Bhausahab Sarjerao Malvadkar .Applicant

Vs.

The State of Maharashtra .Respondent

**Nisha S.
Chitnis**

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by Nisha S.
Chitnis

Date: 2021.01.28
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Mr. Aniket U. Nikam, Advocate, for the Applicant
Mr. Vivek N. Arote, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 21.01.2021

P. C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 955 of 2018 registered with the Lonikand Police Station, Pune, for the alleged offences punishable under Sections 302, 201, 365, 323 r/w 34 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the prosecution case rests on circumstantial evidence and that there are no circumstances which connect the Applicant with the alleged offences. He submits that neither in the missing complaint nor in the FIR nor in

the ADR enquiry which was conducted by the Shirur Police Station, the Complainant has disclosed that the deceased was last seen with the Applicant. He submits that for the first time, after 15 days of the arrest of the Applicant, the statement of one Balasaheb Warghade was recorded in which the said witness has stated that he had last seen the deceased with the Applicant leaving the Shivajinagar District Court. He further submits that even the daughter-in-law of the deceased although in her statement has stated that the deceased had informed her that he was going to return home late, as he was with the accused and that she had informed the said fact, to her husband and the Complainant, there is no reference of the same by the Complainant, either in the FIR or in the ADR enquiry which was conducted by the Shirur Police Station. He submits that there is no recovery at the instance of the Applicant nor is there any material to connect the Applicant with the alleged offences. He further submits that the Post Mortem Report reveals that the deceased had not sustained any injuries and that the cause of death was stated to be 'Cardiorespiratory arrest due to asphyxia due to drowning'.

4. Learned APP opposed the Application. He submits that the Applicant had motive to kill the deceased, inasmuch as, there was a land dispute between the parties.

5. Perused the papers. According to the prosecution, there was a dispute between the deceased on the one hand and the Applicant – Accused on the other. On 29.08.2018, deceased – Balasaheb Murkute had gone to Shivajinagar District Court in connection with his case. It is alleged that at around 7.45 p. m., the deceased called his daughter-in-law and told her that he would be late. As the deceased did not return home, a missing complaint was lodged by the deceased's son – Mayur Murkute with the Shivajinagar Police Station on 29.08.2018. On 01.09.2018, a dead body was found on the banks of Bhima river (within the jurisdiction of the Shirur Police Station). On 07.09.2018, the Complainant – Mayur Murkute learnt that one dead body of an unknown person was found within the jurisdiction of the Shirur Police Station, pursuant to which, he went to the Shirur Police Station. On seeing the photographs and clothes, he identified the dead body as being that of his father. On 10.09.2018, the statement of the Complainant – Mayur Murkute was recorded by the Shirur Police Station in the ADR enquiry which was conducted by them. On 12.09.2018, an FIR was lodged by the deceased's son – Mayur with the Lonikand Police Station, Pune. In the said complaint / FIR, the Complainant has expressed his apprehension / suspicion on the Applicant and other co-accused, that

they killed his father. The prosecution case rests on circumstantial evidence. Although, according to the prosecution, the deceased called his daughter-in-law – Dhanashree Murkute on 29.08.2018 and informed her that he would be coming late and that he was with the Accused and that she had informed the said fact to her husband and the Complainant, neither the Complainant nor the Complainant's brother have disclosed the same to the police, when their statements were recorded by the Shirur Police Station in the ADR enquiry nor in the complaint / FIR. It is also pertinent to note that two other witnesses i. e. Balasaheb Warghade and Subhash Gavthe had allegedly disclosed that the Applicant was last seen with the deceased on 29.08.2018 and that they had informed the Complainant about the same on 30.08.2018, however, the Complainant has not disclosed about the same, either in the missing complaint lodged on 03.09.2018 or in the ADR enquiry nor in the FIR. It is pertinent to note, that the statements of both these witnesses i. e. Balasaheb Warghade and Subhash Gavthe were recorded after about 15 days of the arrest of the Applicant. Thus, prima facie, at this stage, the alleged last seen circumstance appears to be doubtful. There is no recovery at the instance of the Applicant. The Post Mortem Report of the deceased shows that he had sustained no injuries and that the cause of death was 'Cardiorespiratory arrest due to asphyxia due to

drowning'. The Applicant has no antecedents. The Applicant is in custody since 12.09.2018. Investigation is complete and charge-sheet is filed.

6. Considering the material on record qua the Applicant, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

- (i) The Applicant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 20,000/-** with one or two local sureties in the like amount;
- (ii) The Applicant shall attend the concerned Police Station on the **first Sunday of every month** between **10:00 a. m. and 12:00 noon** for a period of 24 months from the date of release;
- (iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (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 co-operate with the conduct of the trial and attend the trial Court on all the dates, unless exempted;

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

(vii) 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.

All concerned to act on the authenticated copy of this order digitally signed by Personal Assistant / Private Secretary.

(REVATI MOHITE DERE, J.)