

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1054 OF 2022

Yogesh Sarjerao Khandagale

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

**WITH
BAIL APPLICATION NO. 668 OF 2022**

Parmeshwar Babasaheb Khandagale

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

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Mr. K.D. Jadhav, Advocate a/w Mr. V.L. Bhange, Advocates for applicant in
BA/1054/2022

Mr. A.K. Bhosle, Advocate for applicant in BA/668/2022

Mr. N.T. Bhagat, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT, J.

DATE : 29th JULY, 2022

PER COURT :

1. Both these applications for bail under Section 439 of Code of Criminal Procedure are being decided by this common order since they are arising from one and the same crime. The applicants have been arrested in connection with Crime No. 505 of 2021 registered with M.I.D.C. CIDCO Police Station, Dist. Aurangabad for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The F.I.R. has been lodged by son of the deceased, Sudam Shinde, on 08th December, 2021. It is averred in the F.I.R. that the deceased was alcoholic. He left home at 09.30 a.m. on 06th December, 2021 for hospital at Aurangabad. He however, did not return home. A dead body of the informant's father was found in a field behind Sahara City. On having learnt the same, the informant went to the site. He identified the dead body of his father. It was found that head of the deceased was smashed with a stone. A blood stained stone was lying by the side of the dead body. The informant, therefore, lodged the F.I.R. alleging some unknown person has murdered his father for some unknown reason.

4. The crime was investigated. It was found during investigation that the applicants and the deceased were together in the afternoon of 06th December, 2021. They purchased liquor bottle from a wine shop and consumed the same together. Applicant – Parmeshwar was seen in a C.C.T.V. footage purchasing/taking petrol for his motorbike at a petrol pump in the vicinity of the scene of offence. The applicants, therefore, came to be apprehended. During interrogation, they confessed to have murdered Babanrao Shinde.

5. Learned counsel for the applicants would submit that the case is based on circumstantial evidence. There is no chain of circumstances pointing towards the guilt of the applicants. Mere last seen theory would be of little consequence. The applicants have been behind the bars since 11th December, 2021. The charge-sheet has been filed. They, therefore, urged for grant of the applications.

6. Learned A.P.P. would, on the other hand, submit that it is a serious offence. The applicants and deceased were together sometime before the deceased was killed. Same indicates the applicants' involvement in the crime in question. He, therefore, urged for rejection of the applications.

7. Considered the submissions advanced. The F.I.R. has been lodged against an unknown person. The case is based on circumstantial evidence. The deceased was alcoholic. He had left the house by 09.30 in the morning of 06th December, 2021 for Aurangabad. He however, did not return home. His dead body was found in a field behind the Sahara City. His head was smashed with stone. The prosecution relied on the C.C.T.V. footage recorded in a C.C.T.V. camera installed at a petrol pump in the vicinity of the scene of the crime. As per the said C.C.T.V. footage, Applicant - Parmeshwar was seen taking petrol in his motorbike by little past 04.00 p.m. Then there

is statement of a salesman of the country liquor shop recorded on 13th December, 2021. As per his statement, in the afternoon of 06th December, 2021 two persons had come to the shop. They bought a liquor bottle and consumed the same just outside the shop and then went away. Admittedly, on arrest of the applicants, they were not subjected to the test identification parade. The police had simply shown this witness photographs of the deceased and that of the applicants wherefrom he identified as the persons, who had come to fetch liquor bottle. This very witness gave a statement under Section 164 of the Code of Criminal Procedure where he stated that the deceased had come to his shop for purchase of liquor bottle. He did not state in his statement that the applicants or any other two persons had accompanied the deceased.

8. It is reiterated that the case is based on circumstantial evidence. The applicants have been behind the bars for little over seven months. Investigation is over. Charge-sheet is filed. It will take time for commencement and conclusion of trial. The incriminating material is only in the nature of last seen together.

9. In view of above, the applications deserve to be allowed. Hence I pass the following order :-

ORDER

(I) The bail applications are allowed.

(II) The applicants be released, in connection with Crime No. Crime No. 505 of 2021 registered with M.I.D.C. CIDCO Police Station, Dist. Aurangabad for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety in the like amount.

(III) The applicants shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

SSD