

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

BAIL APPLICATION NO. 732 OF 2022

Babasaheb Vishwanath Survase

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. S.S. Thombre, Advocate h/f Mr. A.V. Lavte, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT, J.
DATE : 01st AUGUST, 2022**

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 199 of 2021 registered with Sirsala Police Station, Dist. Beed for the offences punishable under Sections 302, 201, 120-B and 323 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 one Mr. Tushar Gaikwad, Police Naik, serving with Sirsala Police Station, Dist. Beed on 02nd December, 2021. He was entrusted with an enquiry into an unnatural death, since the dead

body of a male person was found in a Wangi lake along Sirsala-Beed road. On inquest and postmortem examination report, it was revealed that the deceased was murdered. The informant, therefore, lodged the F.I.R. against an unknown person. The crime was investigated. On investigation, charge-sheet has been filed. The applicant and co-accused came to be arrested.

4. It is the case of the prosecution that the deceased was identified as one Santosh Devkate of Kuranwadi, Tq. Ambajogai. He had purchased goats worth Rs.11 lakhs on credit from co-accused Pintu Hegadkar. This co-accused was, time and again, insisting the deceased to clear the dues. On the given day, there was number of telephone calls between the deceased and co-accused – Pintu Hegadkar. There is a statement of one driver viz. Kailas Bharade. It is in his statement that the applicant - Babasaheb and co-accused – Bhagwat and Pintu had engaged his Scorpio vehicle for visiting Ambajogai. The applicant and co-accused were on their motorbikes. They parked their motorbike at Sirsala point. All of them boarded the Scorpio vehicle. It is further in his statement that while proceeding for Ambajogai there were number of phone calls between the co-accused – Pintu and one Santosh. They were talking over sale of goats. Co-accused – Pintu even abused the caller. Co-accused – Dagduba joined the applicant and other co-accused at village Malhivara. All of them reached Ambajogai by 07.30 p.m. Santosh (deceased) was learned to have come at Shivaji Chowk, Ambajogai. All of

them, therefore, went there. Co-accused – Pintu Hegadkar and the applicant asked Santosh to join them for settling the transaction at Sirsala. Thus, Santosh joined them. On the way, there were talks between Pintu and Santosh over sale of goats worth Rs.11 lakhs. Co-accused – Pintu had even slapped Santosh. All of them came to Sirsala point by 10.30 p.m. Co-accused – Bhagwat and Pintu took their motorbikes and asked driver - Kailas to follow them via Beed road. On the way, near Fakirjawala, co-accused – Bhagwat and Pintu bought two liquor bottles. They could not get meal due to late hours. Both of them then came to the vehicle and asked the applicant and Santosh to join them. The driver was paid balance Rs.1,800/- and was asked to leave. The witness heard co-accused – Bhagwat asked others to move to his field for settlement of money transaction. It was about 11.00 p.m. The driver came back to Sirsala.

5. To indicate applicant's involvement in the alleged crime, the material sought to be relied upon is a statement referred to hereinabove, besides Call Data Record ('C.D.R.'), indicating location of the four accused and the deceased was at or around one and the same place at the relevant time. Another material is inadmissible in evidence.

6. Learned counsel for the applicant would submit that the case is based on circumstantial evidence. There is no material to indicate the

circumstances forming a chain of events indicating the applicant's involvement in the crime. The applicant did not have any motive. The statement of driver of the Scorpio vehicle has been recorded eighteen days after the alleged incident. Even if his statement is accepted as it is, mere last seen together would not be sufficient to deny the applicant bail.

7. Learned A.P.P. would, on the other hand, submit that it was a planned murder. The material, which is in the nature of circumstantial evidence, points towards the guilt of the applicant. He, therefore, urged for rejection of the application.

8. Considered the submissions advanced. There was monetary dispute between the co-accused – Pintu Hegadkar and the deceased. The applicant cannot be said to have any motive. There is no eye witness account. The statement of driver of the Scorpio vehicle, in which the applicant, co-accused and the deceased had allegedly travelled sometime before the alleged offence, was recorded after eighteen days of the alleged incident. The driver did not know the deceased. Learned counsel for the applicant has relied on the judgment of the Apex Court in the case of ***Anjan Kumar Sarma and Others Vs. State of Aasam, (2017) 14 SCC 359***, wherein it has been observed that only circumstances of last seen together and absence of satisfactory explanation cannot be made basis of conviction.

9. Without observing anything about merits of the matter, suffice it to say the case is based on circumstantial evidence. There are only two circumstances relied upon by the prosecution, first one is of last seen together and second is C.D.R. The applicant has been behind the bars for little over eight months. It will take time for commencement and conclusion of the trial.

10. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released, in connection with Crime No. 199 of 2021 registered with Sirsala Police Station, Dist. Beed for the offences punishable under Sections 302, 201, 120-B and 323 of the Indian Penal Code, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

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

(R.G. AVACHAT, J.)

SSD