

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

BAIL APPLICATION NO. 715 OF 2022

1. Ganesh Rohidas Wankhede
Age: 21, Occu. Labour,
R/o Hanuman Nagar, Sillod,
Tq. Sillod, Dist. Aurangabad

2. Sumit @ Swapnil @ Sumedh Vijay Sutar
Age: 21, Occun: Labour,
R/o Ayodya Nagar, N-7,
Aurangabad

..APPLICANTS

VERSUS

State of Maharashtra
Through Sillod Police Station,
Tq. Sillod, Dist. Aurangabad

..RESPONDENT

**WITH
BAIL APPLICATION NO. 899 OF 2022**

Vaibhav Baburao Wavhal
Age: 19 years, Occu.: Labour,
R/o Ranjangaon,
Tq. & Dist. Aurangabad

..APPLICANT

VERSUS

State of Maharashtra
Through Sillod Police Station,
Tq. Sillod, Dist. Aurangabad

..RESPONDENT

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Mr. S.T. Mahajan, Advocate for applicants in BA/715/2022
Mr. V.B. Patil, Advocate for applicant in BA/899/2022
Mr. N.T. Bhagat, A.P.P. for respondent - State

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**CORAM : R.G. AVACHAT, J.
DATE : 21st JULY, 2022**

PER COURT :

1. Both these applications for bail under Section 439 of Code of Criminal Procedure, are taken up together since they arise from one and the same crime i.e. Crime No. 1 of 2022 registered with Sillod City Police Station, Dist. Aurangabad. The applicants in Bail Application No. 715 of 2022 have been alleged to have committed the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, while the applicant in Bail Application No. 899 of 2022 is alleged to have assisted them in causing disappearance of evidence of the offence of murder.

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

3. The F.I.R. has been lodged by mother of the deceased. It is alleged in the F.I.R. that the informant had two sons and a daughter. The daughter is married. Applicant – Ganesh is one of her sons. Deceased – Amol was another son. Amol was heavily addicted to alcohol. He would always harass the informant. The informant, therefore, would go to her neighbour's house for overnight stay. On 07th December, 2021 Amol had come drunk. There was quarrel between him and the applicant – Ganesh. Co-applicant – Sumit is the friend of Ganesh. Ganesh had attempted to assault Amol with a brick. Amol had threatened him for taking a revenge. In the evening Amol

returned home drunk. The informant served Ganesh and his friend Sumit meal. She also served Amol meal and went to the neighbour's house. On the following morning when the informant came home, she found Amol not at home. Ganesh, in turn, informed her that Amol left the house for work.

4. It is alleged in the F.I.R. that on 02nd January, 2022 daughter of the informant – Komal and her husband had come home. Both, Ganesh and Sumit made an extra judicial confession before them that they strangled Amol and dumped his body in a dilapidated house near Savata Mali mandir at Ranjangaon. The informant, therefore, lodged the F.I.R. against both, Ganesh and Sumit. It was found during investigation that applicant – Vaibhav had assisted the duo in causing disappearance of evidence of the offence of murder.

5. Learned A.P.P. would submit that both, Ganesh and Sumit made an extra judicial confession. It was made to close relations. There is, therefore, no reason to doubt the same. The offence is serious one. Learned A.P.P. would, therefore, urged for rejection of the applications.

6. Learned counsel for the applicant (Bail Application No.899 of 2022) would submit that applicant – Vaibhav is not involved in the offence of murder. He is alleged to have assisted both the co-accused in causing disappearance of the evidence of murder. According to him, the charge-sheet

has been filed. It will take time for commencement of trial and conclusion thereof. He, therefore, urged for grant of application of Vaibhav.

7. Learned counsel for the applicants (Bail Application No. 715 of 2022) would submit that except an extra judicial confession there is no material to connect the applicants with the offence in question. The F.I.R. was lodged after twenty-five days of the alleged incident. According to learned counsel, extra judicial confession is a very weak piece of evidence. There is no other material to connect the applicants with the offence in question. Even if the extra judicial confession is relied upon, that would indicate the applicants to have killed the deceased in exercise of right of private defence. It would, therefore, not an offence of murder. He, therefore, urged for grant of application.

8. Considered the submissions advanced. The F.I.R. has been lodged twenty-four days after the alleged incident. The deceased was the son of the informant. One of the applicants, Ganesh is also her son. Admittedly, Amol was alcoholic. He would harass the mother (informant) everyday. She would, therefore, go to her neighbour's house for overnight stay. On the given day, the deceased had returned home drunk. The informant served him and the applicants Ganesh and his friend Sumit with meals and went to the neighbour's house for sleep. On the following day, Amol was nowhere to be

seen. Applicant – Ganesh informed the mother that he left for work. After some days, applicant – Ganesh is said to have made an extra judicial confession to his sister, her husband and the informant as well. If we peruse the statement of the husband of Ganesha's sister, whom extra judicial confession is made, it would be revealed that the deceased came home drunk by 10.30 p.m. on 07th December, 2021. He picked up quarrel with applicant – Ganesh. The deceased caught hold of neck/throat of applicant – Ganesh. The grip was tight. Efforts to get rescued of the grip were futile. Co-applicant – Sumit, therefore, came from behind and pressed neck of the deceased. The deceased, therefore, fell on the ground. Since he did not die, he was strangled with nylon rope.

9. The extra judicial confession has to be read as a whole. The same indicates the deceased to have had pressed the neck/throat of applicant – Ganesh. He was not releasing him. Co-accused – Sumit, therefore, pressed the neck of the deceased. True, thereafter the deceased fell on the ground. There was no further necessity to exercise the right of defence of body. Still the applicants strangled the deceased with nylon rope.

10. Except the extra judicial confession, there is no other material to connect the applicants, Ganesh and Sumit, with crime in question. On reading of the extra judicial confession as a whole, it would be a question to

be decided during trial as to whether it is really an offence of murder or culpable homicide not amounting to murder.

11. In the peculiar facts and circumstances of the case, the Court is inclined to allow Bail Application No. 715 of 2022. Since they are being granted bail, Bail Application No. 899 of 2022 also deserves 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. 1 of 2022 registered with Sillod City Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 201 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 each in the like amount.

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

(R.G. AVACHAT, J.)

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