

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3175 OF 2021**

Murlidhar Madhukar Waghmare ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr.Satyavrat Joshi i/b Sunil Kamble, for the Applicant.

Ms. Anamika Malhotra, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 8th December, 2021.

PRONOUNCED ON : 3rd January, 2022.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 282 of 2020 registered with Jath Police Station, District- Sangli for the offence punishable under Section 302 r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that the informant is the younger brother of Dhanaji ('deceased' for short). The deceased was having affair with Anuradha Nagesh Landage. However, the said relationship later on come to an end and on account of that there used to be constant

quarrels between them. The prosecution alleges, on 06/10/2020 accused Nagesh Bhima Landage, father of Anuradha, brother-Govind Nagesh Landage and maternal uncle Murlidhar Madhukar Waghmare (applicant) and Shridhar Madhukar Waghmare had also threatened the deceased to be away from Anuradha otherwise they would kill him.

3 According to prosecution, on 08/10/2020 at about 11-30 p.m. the informant received a phone call from one Annappa Nagu Mote informing him that the deceased was lying in front of Ambedkar Nagar Samaj Mandir of village Kanthi. Accordingly informant rushed and found that the deceased was lying in a pool of blood having injuries on the head. At that time, one Sunil Kharat met him and informed that he had seen all the accused, including the applicant, running away in the darkness. The informant accordingly lodged the report.

4 Mr.Joshi, learned Counsel for the applicant, submits that accused Shridhar Madhukar Waghmare has been released on bail by this Court (Coram: Revati Mohite Dere, J.) on 6th October, 2021. Since the applicant is also similarly situated, the benefit of parity be also given to him. Learned Counsel then invited my attention to the statement of prosecution's star witness, namely, Sunil Kharat vis-a-vis statement

recorded under Section 164 of Criminal Procedure Code ('Cr.P.C.' for short) and pointed out discrepancy and then further submitted that the said discrepancy was also noted by this Court in the order dated 6th October, 2021. There is no direct evidence. The case is based on circumstantial evidence. Investigation is over. Charge-sheet has been filed. There are no criminal antecedents. No purpose would be served by keeping the applicant behind the bars. Hence, the applicant deserves to be enlarged on bail, argued learned Counsel.

5 Mrs. Malhotra, learned APP, on the other hand, opposed the submissions by inviting my attention to the statement of Sunil Kharat and submitted that the witness has taken the names of all the accused including the applicant. There can not be ground of parity. Learned APP further invited my attention to the statement of Annappa Nagu Mote and Rahul Shahaji Edake to substantiate her submissions that no parity can be given in view of names taken by the witnesses referred herein-above. Thus there being no merit, the application is liable to be rejected, argued learned APP.

6 Perused the investigation papers.

7 Admittedly, the prosecution case rests on circumstantial evidence. I have gone through the statement of prosecution witness, namely, Sunil Kharat recorded under Section 161 of Cr.P.C. and as also the statement recorded under Section 164 of Cr.P.C. by JMFC, Jath, District-Sangli. Reading both the statements together, one comes across a serious contradiction. While in the statement recorded under Section 161 of Cr.P.C. the said witness has named the applicant as being one of the persons whereas in his statement under Section 164 of Cr.P.C., he maintains a discreet silence in respect of having seen anyone running from the place of occurrence. Prima facie, these two statements are difficult to reconcile with.

8 I have also gone through the statement of Annappa Nagu Mote. Although he states that he had seen the accused Govind Nagesh Landage and the present applicant leaving the spot on a motorcycle but he does not say he had seen any one of them assaulting the deceased. At the most, this may be a circumstance which will have to be read with other cogent and convincing circumstance so as to point out whether the chain of circumstances has been completed by the prosecution or not, which is necessary in a case based on circumstantial evidence.

9 I have also read the statement of Rahul Sahaji Edake but his statement appears to be in the nature of hearsay as according to him, he was told about running away of all the accused from the spot by Sunil Kharat. I have already pointed out the discrepancy appearing in the statement of prosecution witness Sunil Kharat vis-a-vis his statement recorded under Section 164 of Cr.P.C.

10 It is also not the case of recovery of any weapon at the instance of applicant. There are no criminal antecedents. Considering the material on record *qua* the applicant, in my view, the applicant has made out a case for grant of bail. Hence, the following order.

ORDER

(i) Applicant- Murlidhar Madhukar Waghmare shall be released on bail in C.R. No. 282 of 2020 registered with Jath Police Station, District- Sangli on his executing P .R. bond in the sum of Rs. 25,000/- with one or more sureties in like amount.

(ii) The applicant shall not enter the jurisdiction of Jath Police Station till the conclusion of the trial.

(iii) The applicant shall attend the Vishrambaug Police Station, Sangli on the first Saturday of every month between 10.00 a.m, to 11.00 a.m.

till the conclusion of the trial.

(iv) The applicant shall attend the trial regularly.

(v) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(vi) Bail before the trial Court.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)