

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.140 OF 2022

Akash Anil Gavali ...Applicant
vs.
The State of Maharashtra ...Respondent

**VISHAL
SUBHASH
PAREKAR**

Mr. Balwant Salunkhe a/w. Mr. Nandkumar Yadav, for the Applicant.
Mr. A.A. Palkar, APP, for the State.

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CORAM : N. J. JAMADAR, J.

ORDER RESERVED ON : JULY 04, 2022
ORDER PRONOUNCED ON : JULY 19, 2022

P.C.:

1. This is an application for bail under section 439 of the Code of Criminal Procedure, 1973.

2. The applicant is arraigned along with his brother Aksay (accused No. 11) in C.R. No. 379 of 2021 registered with Karad City police station, Satara for the offences punishable under section 302 read with 34 of Indian Penal Code, 1860 and section 4 read with 25 of Arms Act, 1959.

3. The prosecution case runs as under:-

Kiran Lade (the deceased) was the brother of Kundan Lade,

the first informant. The deceased was working as a driver on contract basis. On 25th June, 2021 the deceased had left home after lunch. He did not return on the following night. On the next morning, the body of the deceased was found at Choundeshwari Nagar, Govare. There were marks of injuries on the head, face and hands of the deceased. A sword stick like sharp weapon was found lying near the left leg of the deceased. It transpired that on previous night the deceased had a quarrel with the applicants while consuming liquor. Thus, the first informant lodged report against the applicant.

4. Investigation commenced. The applicant came to be arrested. Investigating officer interrogated the witnesses and recorded their statements. The complicity of the co-accused Akshay was also revealed.

5. The applicant has preferred this application asserting that the entire case rests on circumstantial evidence. There is no circumstance which clearly incriminates the applicant. Nor anything has been recovered at the instance of the applicant. He has been implicated on the basis of suspicion. Even otherwise, the investigation is complete and charge-sheet has been lodged. The

applicant has been in custody since 26th June, 2021. The trial is not likely to conclude in a reasonable time. Hence, the applicant deserves to be enlarged on bail.

6. I have perused the report under section 173 of the Code and the documents annexed with it. I have also heard Mr. Salunkhe, learned counsel for the applicant and Mr. Palkar, learned APP for the State at, some length.

7. Mr. Salunkhe would urge that the prosecution case is based on circumstantial evidence. However, none of the circumstances, pressed into service against the applicant, has any incriminating tendency. The witnesses whose statement the prosecution relies, have not categorically stated that the deceased was last seen in the company of the applicant. The endeavour of the prosecution to bank upon the alleged extra judicial confession made by Akshay, the brother of the applicant, is of no avail qua the applicant. The applicant, in turn, has not made any extra judicial confession. On the basis of surmises, the investigating agency has roped in the applicant. Therefore, the applicant deserves to be enlarged on bail, urged Mr. Salunkhe.

8. Per contra, Mr. Palkar, learned APP submitted that there is adequate material on record to show the complicity of the applicant. Reliance was placed on the statements of Pramod Kamble, Ganesh Jadhav, Purnanand Sasve who were present with the accused and the deceased on the night of occurrence. Inviting the attention of the Court to the statements of the witnesses, recorded under section 164 of the Code, Mr. Palkar, would urge that there are circumstances which clearly incriminate the applicant.

9. To begin with, it is necessary to note that the deceased died on account of stab injury to chest with craniocerebral injury. During the course of postmortem examination, the autopsy surgeon noted three lacerated wounds over right forehead, one lacerated wound over the left cheek, one lacerated wound over left parietal region, one lacerated wound over middle 1/3 of left forehead and two incised wounds over middle 1/3 left forearm left elbow. Prima facie, the injuries indicate that the deceased met a homicidal death.

10. Pramod Kamble, who is a common friend of the applicant and the deceased Kiran Lade, states that on the night of occurrence, the applicant had called the deceased. The applicant collected the deceased in the Scorpio vehicle from Budhwar Peth, Karad. The

deceased was taken to Choundeshwari Nagar, Govare. When the deceased alighted from the car, the co-accused Akshay Gavali hugged the deceased. Thereafter, the applicant and the witnesses left the spot. They came near the house of witness Dayanand Pawar. The applicant asked them to wait at the said place and he would come in a while. The applicants and Dayanand Pawar, went on motor-cycle. After about one hour, the applicants and Dayanand Pawar returned to the said place on activa scooter. The applicant Akash Gavali had sustained an injury on his right little finger. It was bleeding. Upon being inquired, the applicant Akash replied that dada (Akshay, accused No. 1) assaulted the deceased. When asked about the reason for the assault, the applicant replied that the deceased had abused Akshay in the bar. In his statement recorded under section 164 of the Code, Pramod Kamble reiterates the aforesaid version.

11. It would be contextually relevant to note that Dayanand Pawar, who had accompanied the applicant when he parted company of Pramod Kamble, states that when they reached the spot where the deceased was waiting, he found the deceased under the influence of liquor. The co-accused Akshay came thereat. The applicant asked Dayanand Pawar to go to the bridge along with

motor-cycle and they would come lateron. After about 10-15 minutes Akash and Akshay returned. He did not inquire with the applicant and Akshay as to where Kiran was, as the later was drunk. While they were proceeding towards Banwadi Fata, co-accused Akshay called one of his friends along with a shirt and water bottle. There was blood on the face of the co-accused Akshay. At that time, he noticed that the applicant Akash had also sustained injury on his hand. The co-accused Akshay disclosed that “they” had killed deceased Kiran. Thereafter, co-accused Akshay had changed the shirt and washed his face. In his statement recorded under section 164 of the Code, Dayanand Pawar reiterate the aforesaid version with the change that Akshay disclosed that ‘he’ had killed the deceased.

12. Ganesh Jadhav, who accompanied the accused on the night of occurrence has also stated the same version before the police that the accused brother duo asked them to proceed after meeting the deceased. They returned to bridge after a while. Kiran was not with them at that time. In his statement before the learned Magistrate, Ganesh Jadhav attributes the said act of asking them to proceed ahead to the bridge, to co-accused Akshay alone. He further asserts that there was injury on the right little finger of the applicant.

13. Purnand Sasve, another witness informed that on the night of occurrence the co-accused Akshay had concealed a sharp weapon at his waist. He was blurting out that he would kill somebody. When the applicant brought the deceased at the said place, co-accused Akshay hugged him. Thereafter, they sat thereat and started consuming liquor.

14. Pursuant to the disclosure statement made by the co-accused Akshay, the clothes which he wore at the time of occurrence with blood stains thereon were recovered.

15. In the backdrop of the aforesaid material, at this juncture, it is necessary to note that there are circumstances which indicate that the deceased was in the company of the accused brother duo for a period of at least 15 minutes. The witnesses had seen the deceased with the accused alive. After a while, the accused returned to the place where the witnesses were asked to wait, the deceased was not with them. There were marks of injuries on the person of the applicant as well as the co-accused. There was blood on the hands and face of the co-accused. Shirt of the co-accused was stained with blood. The co-accused allegedly made an extra judicial confession that “they” killed the deceased. The applicant, in turn,

allegedly stated that the co-accused killed the deceased. These circumstances are required to be appreciated in the light of the fact that the applicant had taken the deceased in the Scorpio car to the place where the deceased was found dead. The applicant allegedly picked up the deceased from Budhwar Peth.

16. In the backdrop of the aforesaid material, at this stage, it would be difficult to draw a distinction between the role attributable to the applicant and co-accused Akshay. The witnesses have categorically stated that the applicant and Akshay were in the company of the deceased Kiran for about 15 minutes after they were asked to leave the said place.

17. In this view of the matter, I am not persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands rejected.

2] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of

the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(N. J. JAMADAR, J.)