

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 418 OF 2021

Amit Balasaheb Sathe ...Applicant

versus

The State of Maharashtra ...Respondent

Mr. Shailesh Kharat, for the Applicant.

Mr. Y. Y. Dabake, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED : 13th JUNE, 2022

ORDER:-

1. The applicant has preferred this application to enlarge him on bail in CR No.93 of 2019, registered with Talegaon Dabhade Police Station, Pune, for the offences punishable under Sections 120B, 302, 364 and 201 of the Indian Penal Code, 1860 ("the Penal Code") and Section 4(25) of the Arms Act and Sections 37(1) r/w 135 of the Bombay Police Act, 1951.

2. The gravamen of indictment against the applicant (accused no.3) is that the applicant in pursuance of a criminal conspiracy with co-accused Sahil @ Baba Shinde (A1), Saurabh Khedekar (A2), Nikhil Kalate and a child in conflict with law abducted Swapnil @ Hanya Sutar (the deceased) and done him to death and caused the disappearance of evidence so as to screen themselves from legal punishment. The accused no.1

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Sahil had a grudge against the deceased as latter had abused and assaulted co-accused no.1 for having maintained friendship with a girl, who was the relative of the deceased. The co-accused and the applicant allegedly induced the deceased to accompany them to Jambhul Estate on the bank of river Indrayani and assaulted him by means of deadly weapons. The dead body was concealed near the field of one Balu Kalekar with a view to cause disappearance of the evidence.

3. The applicant has preferred this application with the assertion that there is no material to connect the applicant with the crime. In fact, there is no circumstance which incriminates the applicant so as to form a chain of circumstances which unerringly points to the guilt of the applicant. The prosecution case is based on surmises and conjunctures. Thus, the applicant is entitled to be released on bail.

4. I have heard Mr. Kharat, the learned Counsel for the applicant and Mr. Dabake, the learned APP for the State. With the assistance of the learned Counsels for the parties, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents annexed with it.

5. The learned Counsel for the applicant submitted that the entire case is based on circumstantial evidence. However, there is no circumstance worth its name, which incriminates the applicant. Inviting the attention of the Court to the statements of the witnesses Swapnil Jadhav and Abhishek Sonawane, who claimed to have overheard the conversation of the applicant and co-accused at the hotel *Chool Mutton* of Sagar Jadhav to the effect that they were hatching the plan to eliminate the deceased, Mr. Kharat urged that apart from such inherently weak claim of the witnesses, there is no other material. Suraj Walunj, who runs a hotel stated before the police that on 4th June, 2019, co-accused no.1, one Sahil and his friends including the applicant had visited his hotel.

6. The aforesaid material, even if taken at par, is of no incriminating tendency whatsoever, submitted Mr. Kharat.

7. Mr. Dabake, the learned APP for the State fairly submitted that apart from the aforesaid statements of the witnesses, there is no other material except the statement of one Ajit Shinde before whom co-accused no.1 - Sahil had allegedly made an extrajudicial confession.

8. I have perused the statement of Ajit Shinde.

9. The said statement refers to an incident of 28th May, 2019, much before the alleged date of abduction of the deceased. At best, the said statement of Ajit Shinde can be stated to be in respect of the threat allegedly given by the co-accused no.1 to eliminate the deceased.

10. Evidently, the case entirely rests on the circumstantial evidence. Even if the statements, which are relied upon by the prosecution, are taken as they stand, they are bereft of any incriminating tendency against the applicant. There is no material to show that the applicant was either last seen in the company of the deceased or had called the deceased to accompany him. The mere fact that the applicant had visited the hotel *Chool Mutton* of Sagar Jadhav on 4th June, 2019 along with the co-accused Swapnil, even if assumed to be true, does not in itself constitute a circumstance, which leads to the complicity of the applicant. Thus a *prima facie* case for bail is made out.

11. The applicant is in custody since 25th June, 2019. Investigation is complete for all intent and purpose. The applicant seems to have roots in the society. The possibility of fleeing away from justice and tampering with prosecution evidence/witnesses appears to be remote.

12. Hence, the following order:

: O R D E R :

- (i)** The application stands allowed.
- (ii)** The applicant Amit Balasaheb Sathe be released on bail on furnishing a PR Bond in the sum of Rs.25,000/- and one or two sureties in the like amount to the satisfaction of the learned Sessions Judge, Pune.
- (iii)** The applicant shall furnish his permanent residential address and contact number to the Investigating Officer within seven days from today.
- (iv)** The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (v)** The applicant shall attend the jurisdictional Court regularly.

[N. J. JAMADAR, J.]