

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

CRIMINAL BAIL APPLICATION NO.454 OF 2021

Vijay Atmram Bansode Applicant
Versus
The State of Maharashtra Respondent

Mr. Aniket Nikam i/b. Mr. Vivek N. Arote for the Applicant.
Smt. A. A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 8th FEBRUARY, 2022

(Through Video Conferencing)

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R. No.132 of 2018 registered at APMC Police Station, Navi Mumbai, on 23rd May, 2018. The Applicant was arrested on 25th May, 2018 and since then he is in custody. The investigation is over and the chargesheet is filed.

2. Heard Shri Aniket Nikam, learned counsel for the Applicant and Smt. A. A. Takalkar, learned APP for the State/Respondent.

3. The prosecution story is that somewhere between 17th May, 2018 to 19th May, 2018, the Applicant and co-accused Yallappa Hadimani, Atul Kamble, Sumit Surve entered the house of one Suman Hande (deceased). All of them together overpowered her. She was smothered to death. The ornaments present in the cupboard, worth

more than Rs.3,07,000/-, weighing 150 grams, and one mobile phone were taken away. The mobile phone was thrown away and the ornaments were distributed. The Applicant was arrested on 25th May, 2018.

4. The prosecution case is that the Applicant entered the house on the pretext of helping the deceased in filling up some forms for Widow Pension Scheme. Taking advantage of her helpless situation, this offence was committed.

5. Learned counsel for the Applicant submitted that the material against the accused is based on the circumstantial evidence. There is recovery of ornaments at his instance, but, none of the witnesses or family members of the deceased has identified those ornaments to connect the Applicant with the crime. There is a statement of one neighbour who has seen the Applicant in the house of the deceased. However, that statement is not reliable. The unknown person was introduced to this witness as Gaikwad, but the Applicant's name was Bansode to the knowledge of the deceased. He submitted that there is mismatch of the description of the articles recovered at the instance of the Applicant and mentioned in the FIR. There is no locket mentioned in the FIR, but, it was shown recovered at the instance of the Applicant. He submitted that the evidence against the Applicant is very

weak . The witness who had identified him as Gaikwad when she has shown photograph of the Applicant at the police station and therefore this identification is of no importance. He relied on the Order passed by this Court (Coram : S. K. Shinde, J) on 4th November, 2019 granting bail to co-accused Atul Kamble from whom the documents of the deceased were recovered. He further submitted that the Applicant's role stands on the better footing.

6. The learned APP opposed this Application. She submitted that bail Application of co-accused Yallappa Hadimani, from whom the bags and ornaments were recovered, was rejected by this Court (Coram : Nitin W. Sambre, J) on 1st December, 2021. She submitted that the stolen ornaments were found soon after the incident. The Applicant and others had booked a lodge on the very date of incident, even though the Applicant was resident of the same area. She submitted that these circumstances shows the prior meeting of mind. She has pointed out that there are serious antecedents against the present Applicant.

7. I have considered these submissions. The cause of death mentioned in the post mortem report attached to the charge-sheet is 'smothering (Asphyxial death due to smothering)'. Thus, the victim had died an unnatural death. She was murdered. The circumstances against the Applicant are as follows :

- (i) The ornaments were recovered at his instance on 27th May, 2018.
- (ii) He had kept some ornaments with a Jeweller Sandip Jain and some ornaments were recovered at his instance from his room. He had kept those ornaments hidden in his cupboard and under the mattress. He had not accounted for those ornaments.
- (iii) The description in the FIR about ornaments are of four gold bangles, two gold chains, two heavy bangles, three gold rings and one mobile phone. The articles which were recovered from the Applicant are gold earrings / tops, gold chain, one gold ring and one gold locket, besides, 10 bangles. The Applicant has not accounted for these ornaments. They were hidden in his room and some of them were kept with the jeweller. As rightly observed by the Session Court, at this stage, in this case Section 114 of Indian Evidence Act, 1872, will come into play. It provides that the Court may presume that a man who is in possession of the stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The

incident had occurred on 17th May, 2018 and the Applicant was arrested on 25th May, 2018. The recovery was effected at Applicant's instance on 27th May, 2018. So the proximity is shown. The Applicant had stolen those ornaments and he has not accounted for them. Therefore, it cannot be said that there is no connection between the ornaments stolen from the deceased and those which were recovered at the instance of the Applicant and from the jeweller.

- (iv) The next circumstance is of booking of lodge on 17th May, 2018 at 4.10 pm. The charge-sheet contained extract of the register as well as the statement of the employees of the lodge. This evidence shows that the Applicant had his three assistants had booked the room in the lodge on 17th May, 2018 at 4.00 O'clock only for one and half hours.

According to the prosecution case, this was done as part of the conspiracy and for distribution of the ornaments. They were seen coming in that lodge with bags. Some bags were recovered at the instance of the co-accused.

- (v) Next circumstance is of the statement of the witness Shobha Thombare, who has stated that on 16th May 2018

the Applicant was present in the house of the deceased and was telling the deceased to fill up a form for Widow Pension Scheme. The deceased had introduced the Applicant as one Gaikwad to this lady witness. This witness has identified the Applicant by his photograph. Though ideally the identification parade should have been held. However, this witness had mentioned a mobile number in the statement. The Applicant had called this witness from the same mobile number in that night. In investigation, it was revealed that the same mobile number belongs to present Applicant. This is a strong evidence against the Applicant to show that he had gone to the house of the deceased on 16th May, 2018 and had claimed himself as one Gaikwad. The Applicant has concealed his real name.

- (vi) The statement of Shatrughna Patil indicates that the deceased had met the Applicant. That particular statement does not clearly show that the Applicant was knowing the Applicant as Vijay Bansode and not as Gaikwad. He has only stated that the Applicant was working with Aadhar Centre and was only helping the deceased in

documentation. The name of this Applicant was not discussed at that time.

(vii) The statement of witness Shobha Thombare is recorded under Section 164 of Criminal Procedure Code, 1973, wherein she has stuck to her story.

(viii) Apart from these main statements, there is a statement of handkerchief seller, who had sold the handkerchiefs used in the commission of the crime by the Applicant and others.

8. All these circumstances together form a chain of circumstances against the present Applicant. The offence is quite serious. There are serious antecedents against the Applicant. Therefore, no case for bail is made out.

9. The Application is rejected.

(SARANG V. KOTWAL, J.)