

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

CRIMINAL BAIL APPLICATION NO. 1048 OF 2022

Pavan Shital Malame	...Applicant
Vs.	
State of Maharashtra	...Respondent

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Mr. Shekhar A. Ingawale, for the Applicant.
Ms. Veera Shinde, APP for the Respondent-State.

**CORAM : C.V. BHADANG, J.
DATE : 28 SEPTEMBER 2022**

P.C.

. This is second application filed by the Applicant (Accused No.2), seeking bail. The previous application being Bail Application (ST) No.2659/2020 was rejected on 21 December 2020. In that view of the matter, this application is placed before this Bench.

2. I have heard the learned counsel for the Applicant and the learned APP. Perused record.

3. The Applicant (Accused No.2) alongwith co-accused Kiran Vijay Malame is facing prosecution for the offence punishable

under Section 302, 201 r/w. 34 of IPC, for having intentionally caused death of one Balu alias Vicky Madhukar Malame.

4. The aforesaid offence was registered on the basis of the complaint lodged by one Atul Sambhaji Malame, who is cousin brother of the deceased. During the course of the investigation, it was revealed that the deceased was allegedly teasing the wife of the Accused No.1 Kiran Malame and being annoyed by that, the Accused No.1 in association with the present Applicant, took the deceased to a hotel, where the deceased was made to drink liquor and thereafter, he was done to death by assaulting him and the dead body was disposed of in the field of one Ajit Patil at Village Ankali. The deceased had gone missing on 13 September 2019 and the dead body was recovered on 15 September 2019 in a highly decomposed state. The Post Mortem report shows that there was proliferation of maggots on the dead body and therefore, the exact date / time of death could not be ascertained by the Medical Officer.

5. The evidence collected against the Applicant and the co-accused is in the form of circumstantial evidence. In so far as the present Applicant is concerned, there is recovery of a stick and the Applicant and the co-accused being seen in the company of the deceased first in the hotel and secondly while proceeding on a motorcycle.

4. Considering the circumstances and the fact that there were criminal antecedents to the discredit of the Applicant, this Court had refused to release the Applicant on bail.

5. The learned counsel for the Applicant now points out that the Accused No.1 Kiran Malame has been granted bail by the learned Sessions Judge by order dated 17 March 2021 in Sessions Case No.288/2020. It is also submitted that the stick which has been recovered from the Applicant is not shown to be the weapon of assault as there are no external injuries as such noticed on the dead body, except in the nature of abrasions which can also be caused by development of maggots. It is submitted that the Sessions Judge had refused to grant bail to the Applicant only on the ground that the previous application was rejected by this Court.

6. Learned APP has pointed out that there are criminal antecedents which is a distinct circumstance in so far as present Applicant is concerned. She however did not dispute that the trial has not progressed and not even the charge is framed. She also, on instructions, states that the order granting bail to the Accused No.1 has not been challenged by the State.

7. I have carefully considered the circumstances and the submissions made.

8. Prima facie, it can be seen that the motive for commission of the offence is that the deceased was teasing the wife of Accused No.1 and therefore, normally Accused No.1 would be having the primary motive / intention to eliminate the deceased. Even going by the prosecution case that the Applicant was the associate of the Accused No.1, as noticed earlier, the case is based on circumstantial evidence, inter alia on the circumstance as to last seen together. In an appropriate case, a new or a different angle on the prosecution case and the material collected, can be considered in the second bail application. I would make it clear that the matter entirely depends on the facts and circumstances of each case. It can also be seen that the dead body was found in a highly decomposed state and the Medical Officer conducting the post mortem was unable to ascertain the date and time of death much less injuries which led to death and/or cause of death. At least at this stage it is not shown to be related to the stick allegedly recovered from the Applicant. That apart, the Accused No.1 has been granted bail by the learned Sessions Judge which the State has chosen not to challenge. In the overall circumstances, I find that the detention of the Applicant behind bars may not be justified. The Applicant was arrested on 16 September 2019 and is in custody for more than three years now. In that view of the matter, the following order is passed.

ORDER

- (i) The Criminal Bail Application is allowed.

(ii) The Applicant Pavan Shital Malame, be released on bail in Crime No.103/2019 of Police Station Sangli Rural, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties, in the like amount.

(iii) The Applicant shall undertake to remain present before the learned Sessions Judge during the course of trial, unless exempted.

(iv) The Applicant shall not directly or indirectly make any attempt to influence or tamper with the prosecution evidence or witnesses.

(v) In the event of breach, the bail is liable to be cancelled.

(vi) Bail bonds to be furnished before the learned Sessions Judge.

The Criminal Application is disposed of, in the aforesaid terms.

C.V. BHADANG, J.