

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1859 OF 2021**

Saurabh Raju @ Rajendra Dhage] Applicant

Vs.

The State of Maharashtra] Respondent

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Mr. Aniket Nikam a/w Mr. Aashish Satpute a/w Mr. Piyush R. Toshnival a/w Mr. Vivek Arote, for Applicant.

Mr. Amit A. Palkar, A.P.P, for Respondent-State.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 4th August, 2022.

P.C.

1. By this application under section 439 of the Code of Criminal Procedure, the applicant seeks his release on bail who has been charge-sheeted by *Niphad* Police Station in C.R. No.I-158/2019 for the offences punishable under sections 302, 201 r/w 34 of the Indian Penal Code. The prosecution case goes like this.

2. Complainant, who was then serving as a Police Sub Inspector with Economic Offence Wing, Unit No.1 of *Nashik*, while investigating C.R. No.328 of 2019 registered with *Aadgaon* Police Station for the offences punishable under Sections 454 and 380 of the I.P.C, seized a mobile of juvenile-in-conflict with law.

3. While checking his mobile, incidentally the complainant noticed one video clip in the gallery, wherein, applicant was found pouring petrol or some corrosive substance due to which something was burning. The complainant further noticed certain photographs

and a selfie sent by the accused persons to one Nilesh on his WhatsApp which depicted the applicant along with rest of the accused with an unknown burning object.

4. Investigation further revealed that one Sanjay Shewale (deceased) who was a vagabond was abusing and troubling mother of the applicant since last one or two years. He used to abuse and insult applicant's mother, who treated the said Sanjay Shewale like her brother. The applicant was, therefore, enraged with the said Sanjay Shewale. It is alleged that he along with rest of the accused assaulted Sanjay Shewale with a sickle, killed him, and, thereafter, burnt his dead body by pouring petrol on 18th May, 2019 at round 11.00 p.m. Not only that, the applicant along with rest of the accused, video graphed the incident.

5. After investigation, a charge-sheet came to be filed against the applicant. The applicant failed in his first attempt to secure bail from the Court of Additional Session Judge, *Niphad*, who had rejected the bail application vide order dated 3rd November, 2020.

6. I heard Mr. Nikam, learned Counsel for the applicant and the learned A.P.P at considerable length.

7. The incident in question had occurred on 18th May, 2019. However, the First Information Report came to be lodged on 12th June, 2019 and the applicant was arrested on 18th June, 2019. The entire case of the prosecution is based on circumstantial evidence.

8. Mr. Nikam would argue that there is absolutely no evidence *qua* the applicant, save and except, some indecipherable conversation of the applicant with other accused. He further submits that though a sickle came to be recovered at the behest of the applicant, it was *sans* blood stains and has no nexus with the alleged crime. Deceased Sanjay Shewale, according to Mr. Nikam, was a vagabond, alcoholic and of quarrelsome nature who used to pick up quarrel with the mother of the applicant. He submits that there was no motive for the applicant to eliminate the deceased. The most important aspect, according to Mr. Nikam is that body of the deceased was not found by the Investigating Officer and, therefore, there is no postmortem report on record. Arguments of Mr. Nikam, at this stage, cannot be said to be out of context or without any substance.

9. On the other hand, learned A.P.P objects release of the applicant on bail on the ground that there are several criminal cases against the applicant, who, in case of his release, will definitely influence the prosecution witnesses. There is also a likelihood of his abscondence, in case of his release.

10. It is interesting to note that what had been recovered by the Investigating Officer is burnt pieces of bones which were ultimately sent to the Forensic Science Laboratory for D.N.A analysis. A report of the regional forensic laboratory dated 12th July, 2019 at page No.152 of the paper book indicates the final opinion of the Assistant Chemical Analyzer which reads as under;

"3b) Partly burnt Bone piece (half round)

3c) Bone (vertebrae like)

DNA profiles obtained from blood detected on ex.1 scrapping and DNA profiles obtained from ex.3a partly bone piece, 3b partly bone piece (Half round) and DNA profiles obtained from blood detected on ex.1, ex.2 and ex.3 scrappings from case no.DNAnk-486/19 are identical and from one and the same source of male origin".

11. Mr. Nikam would argue that though DNA profile obtained from the pieces of the bones *vis-a-vis* parents of the deceased match, yet, that in itself would not be sufficient to establish any nexus, even *prima facie*, with the complicity of the applicant in this crime. In short, Mr. Nikam would, further argue that this case, at the most, can be termed as "*Corpus Delicti*". Even taking the case to the hilt, there is nothing, even *prima facie*, to indicate that the applicant had eliminated the deceased along with other accused while sharing a common intention, but also caused disappearance of the evidence by burning the corpse of the deceased after committing his murder by a means of sickle.

12. Though there are several offences registered against the applicant prior to the offence in question, which are primarily for committing theft, Mr. Nikam would argue that, that itself cannot be a ground to incarcerate the applicant in this crime.

13. My attention is invited by the Counsel to the observations made by the learned Additional Sessions Judge in the impugned order relating to the video clip recorded by the applicant and the other accused wherein it has been specifically noted that the video clip is very vague and the deceased does not appear anywhere, much less, in a burning condition, though something was found to be

burnt, which cannot be said to be a sufficient evidence against the applicant. It is also pertinent to note that rest of the persons appearing in the video clip neither arraigned as accused nor their statements are recorded. Considering the submissions of Mr. Nikam, for the purpose of enlarging the applicant on bail, I do not see any reason to refuse the prayer of the applicant.

14. Reliance is placed by the learned Counsel upon a judgment in the case of **Sudhir Chaudhary and others Vs. State (NCT OF DELHI), (2016) 8 Supreme Court Cases 307**. It was a case under sections 384, 511, 420 and 120-B of the Indian Penal Code alleging that the appellants demanded a sum of money to refrain from telecasting programmes on a television channel pertaining to alleged involvement of a corporate entity in a wrongful activity pertaining to allocation of coal blocks, voice samples which led to the arrest of the appellants.

15. In that case, the appellants consented for tendering their voice samples at Central Forensic Science Laboratory, C.B.I for the purpose of comparing the same with a recording which has been made in the course of sting operation. Grievance of the appellant was that they were being made to read out inculpatory material drawn from an audio recording of alleged sting operation. The appellants objected to do so, moving application for monitoring investigation and for direction to investigating officer for providing material for purpose of a voice sample "which does not contain any inculpatory statement", in presence of a Judicial Magistrate.

16. Paragraphs 9 and 12 of the aforesaid judgment are extracted below;

"9. The Appellants expressly consented to a voice sample being drawn, in their response to the application that was filed by the Investigating officer before the Court of Metropolitan Magistrate. This was reiterated before the High Court. In the submissions which have been urged in these proceedings, learned counsel has specifically stated that the Appellants would abide by the consent which they had furnished to their voice samples being drawn. That being the position, the only surviving issue for this Court is to ensure that the underlying process for drawing the voice samples is fair and reasonable, having due regard to the mandate of Article 21. On the one hand, it is not open to the accused to dictate the course of investigation. Hence, we do not find substance in the submission that the text which is to be read by the appellants in the course of drawing their voice samples should contain no part of the inculpatory words which are a part of the disputed conversation. A commonality of words is necessary to facilitate a spectographic examination.

"12. We are of the view that the aforesaid directions which have been issued by this Court would allay the apprehension of the Appellants in regard to the fairness of the process involved in drawing the voice sample. Our directions ensure that the text which the Appellants would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text. Similarly, permitting the text to contain words drawn from the disputed conversation would meet the legitimate concern of the investigating authorities for making a fair comparison".

17. Ratio laid down in the decision of **Sudhir Chaudhary and others** (supra), is clearly applicable to the present set of facts, in the sense, the applicant herein, according to Mr. Nikam had been asked to read the text which is, essentially, inculpatory in nature for the purpose of drawing his voice sample.

18. In light of the observations made above and in view of the fact that the trial will not be concluded in near future, looking to the age of the applicant and the aspects enumerated hereinabove, no fruitful purpose would be served in incarcerating the applicant behind the bars. Now, to the order.

[a] The applicant be enlarged on bail upon furnishing a P.R bond in the sum of Rs.15000/- with one surety in the like amount to the satisfaction of the Sessions Court, Nashik;

[b] The applicant shall attend the trial on each date scrupulously and shall not influence any of the prosecution witnesses.

19. Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]