

Darshan Patil

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

**BAIL APPLICATION NO. 3899 OF 2021**

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| Mahesh Chandra Ghowda and Anr | ..Applicants |
| vs.                           |              |
| State of Maharashtra          | ..Respondent |

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Mr. Vijay Ram Sahetia for applicants.  
Mr. N.B. Patil APP for respondent.  
Mr. Vijay Madaye, PI (Crime), Borivali Police Station

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**CORAM : M. S. KARNIK, J.**

**DATE : NOVEMBER 28, 2022**

**P.C. :**

1. Heard learned counsel for the applicants.
2. This is an application for bail filed by the applicants – Mahesh Chandra Ghowda and Anil Kumar Ghowda, in respect of C.R. No. 264 of 2019 registered with Borivali Police Station, for the offence punishable under sections 302, 397 and 34 of the Indian Penal Code, 1860 ('IPC' for short).
3. My attention was invited to the order dated 22<sup>nd</sup>

January 2021 passed by this Court in respect of the co-accused. The order reads thus:

"1 Heard learned counsel for the applicant and the learned A.P.P for the State.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 264 of 2019 registered with the Borivali Police Station, Mumbai, for the alleged offences punishable under Sections 302, 397, 34 of the Indian Penal Code.

3 Learned Counsel for the applicant submits that the prosecution case is rests on circumstantial evidence and that there is no material to connect the applicant with the alleged offence. He submits that although, the applicant has been identified by the Rickshaw drivers in the Test Identification Parade, the said circumstance cannot be said to be incriminating. He submits that the applicant has no antecedents and that investigation is complete and chargesheet is filed.

4 Learned APP opposed the application.

5 Perused the papers. According to the complainant – Vilas Joshi, he was living with his father at Laxmi Vaibhav Building, Bhatwadi, Jambhali Galli, Borivali (W), Mumbai at the relevant time when the incident took place on 17/04/2019. It is the prosecution case, that on 17/04/2019, two persons entered the building, went to the complainant's house and committed theft of Rs.10,000/- and killed the complainant's father. The watchman of the building has stated that two unknown persons entered the premises and went to meet the complainant's father and after some time, left the said premises. Admittedly, the said witness was not sent for Test Identification Parade which was held and hence, the two persons who entered the premises, have not been identified. The two rickshaw drivers, who had, allegedly taken the three accused in their rickshaw to and fro, were sent for Test

Identification parade. One of the rickshaw drivers, who dropped the three accused, has identified the applicant. The said rickshaw driver has stated that he dropped the three accused persons in the vicinity of the area where the incident took place. Apart from the aforesaid material, there is no material in terms of last seen or recovery against the applicant. Investigation is complete and charge-sheet is filed.

6 Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 12:00 noon for a period of 12 months from the date of his release;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (v) The applicant shall not leave Mumbai/Thane jurisdiction without the permission of the Trial Court.
- (vi) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person

concerned with the case;

(vii) The applicant shall file an undertaking with regard to clauses (ii) to (iv) in the trial Court, within two weeks of his release;

(viii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7 The application is allowed in the aforesaid terms and is accordingly disposed of.

8 It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9 All concerned to act on the authenticated copy of this order."

**4.** According to me, the applicants are entitled to be released on bail on the ground of parity. However, learned APP submitted that the role of the applicants is different. My attention was invited to the statement of one Mr. Sachin Baburao Mhadgul, who stated that the applicant - Mr. Mahesh Chandra Gowda, had purchased a train ticket from Mysore to Mumbai dated 16/04/2019. It is also submitted that Mr. Mahesh Chandra Gowda was an ex-employee of the deceased. These circumstances will not materially alter the claim of the applicants to seek parity.

**5.** Having regard to the observations of this Court in paragraph no. 5 of the order in respect the co-accused, I find no reason to refuse the bail to the applicants. The nature of the role spelt out is identical. Moreover, the applicants are in custody since 25/04/2019, for a period of more than three years and eleven months. There is no likelihood of the trial commencing in the near future. Hence the following order.

**ORDER**

(a) The applicants – Mahesh Chandra Ghowda and Anil Kumar Ghowda in connection with C.R.No 264 of 19 registered with Borivali Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs 25000/- with one or more sureties of the like amount.

(b) The applicants shall report to the Borivali Police Station once in a week i.e. on Wednesday of every month between 10 a.m. to 1 p.m.

(c) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts

of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicants should not tamper with evidence.

(d) On being released on bail, the applicants shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

**6.** The application is disposed of.

**(M. S. KARNIK, J.)**