

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1800 OF 2021**

Shivaji @ Shiva Dundaram Gharat .. Applicant

Versus

The State of Maharashtra .. Respondent

AND

BAIL APPLICATION NO.2427 OF 2022

Pramod Waman Lute .. Applicant

Versus

The State of Maharashtra .. Respondent

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Ms.Misbaah Solkar for the Applicant in BA/1800/21.

Mr.Raju D. Suryawanshi for the Applicant in BA/2427/22.

Ms.Anamika Malhotra, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 14th SEPTEMBER, 2022

P.C:-

1. These two applications are heard together, since the applicants in these applications are charge-sheeted as accused

Nos.4 and 1 respectively in C.R.No.I-49 of 2018 registered with Ganeshpuri Police Station on 20/04/2018. The subject C.R. invoke Sections 302, 201 read with Section 120-B of the Indian Penal Code and Section 128 and 177 of the Motor Vehicles Act. Accused No.1-Pramod (Applicant in BA/2427/22) came to be arrested on 25/04/2018, whereas accused No.4-Shivaji (Applicant in BA/1800/21) came to be arrested on 07/05/2018. Since the date of their arrest, they are incarcerated and despite filing of the charge-sheet, charge is not framed till date.

2. Heard learned counsel Mr.Suryawanshi representing applicant/accused No.1, learned counsel Ms.Misbaah Solkar representing applicant/accused No.4 and learned A.P.P. Ms.Malhotra for the State.

Learned counsel for the applicants have placed before me an order passed in case of co-accused Vijay Kisan Wakh, who was arraigned as accused No.3 in the same C.R. and who was released on bail, by specifically recording that case of the prosecution is based on the circumstantial evidence and the evidence falls short of conclusively pointing out that the applicant is the person, who is responsible for the death of Shailesh Nimse.

Recording that the investigation is complete and charge-sheet is filed and the trial is not likely to be concluded soon and considering his long incarceration for more than four years, applicant-Vijay Wakh was released on bail.

The learned A.P.P. has also perused the said order.

3. On perusal of the charge-sheet, the role attributed to the present two applicants is identical to the one attributed to co-accused Vijay Wakh.

The case of the prosecution is, that accused No.2-Sakshi, wife of the deceased gained knowledge that deceased was carrying an extra marital affair and, therefore, she hatched conspiracy with other accused to eliminate him. The prosecution alleged that she gave a contract to accused No.1-Pramod for eliminating him and it is alleged that contract was offered for sum of Rs.3,00,000/- and payment of Rs.1,50,000/- was made to accused No.1-Pramod. It is the further case of the prosecution, that accused No.1 with the aid of accused Nos.3 and 4 gained an entry in the house of the deceased with the help of accused no.2 and strangled him by piece of cloth. Thereafter, in order to destroy the evidence, it is alleged that his body was carried out in the boot of his Sonata Embera vehicle and it was set on fire in the forest area of Devchale

region. Pertinent to note that accused No.2, wife of the deceased committed suicide.

4. The case of the prosecution, being based on circumstantial evidence, while dealing with the application of Vijay Wakh, the four circumstances were specifically dealt with and the entire material compiled in the charge-sheet was referred to, which led to the following observations :-

“7 Since the case is based on circumstantial evidence, it is imperative for the prosecution to establish the guilt beyond reasonable doubt and the inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person. The circumstances from which an inference as to the guilt of the accused is to be drawn, will have to be established by the prosecution beyond reasonable doubt and it will be required to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. It is settled principle of law that when the case depends upon the conclusion drawn from those circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt.

If there is any reasonable doubt about the guilt of the accused, he is entitled to be acquitted.”

5. The above observations apply with equal force to the present applicants, since it is settled position of law that the

prosecution, in order to establish it's case, based on circumstantial evidence, will have to establish a complete chain and any infirmity in the evidence would yield benefit to the accused. Since the prosecution has completed it's investigation and compiled the material against the applicants and since they are incarcerated for last more than four years, I deem it fit to release them on bail, subject to the following conditions.

: ORDER :

- (a) Applications are allowed.
- (b) Applicant -Shivaji @ Shiva Dundaram Gharat (Bail Application No.1800/21) and applicant- Pramod Waman Lute (Bail Application No.2427/22) shall be released on bail in connection with C.R.No.I-49 of 2018 registered with -Ganeshpuri Police Stationon furnishing P.R. Bond to the extent of Rs.25,000/-each, with one or two sureties in the like amount.
- (c) The applicants shall mark their attendance before the concerned police station on first Thursday of every trimester between 3.00 p.m. and 5.00 p.m.

(d) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

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

(SMT. BHARATI DANGRE, J.)