

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.3918 OF 2021**

Ganesh Raghunath Waghmare ...Applicant

vs.

The State of Maharashtra ...Respondent

Ms. Shubhangi Parulekar, for the Applicant

Mrs. P.N. Dabholkar, APP, for the State.

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**CORAM : N. J. JAMADAR, J.**

**DATE : JULY 18, 2022**

**P.C.:**

1. This is an application for bail under section 439 of the Code of Criminal Procedure, 1973.

2. The applicant is arraigned in C.R. No. 330 of 2019 registered with Paud police station, Pune for the offences punishable under sections 302 and 201 read with 34 of the Indian Penal Code, 1860.

3. The prosecution case can be summarized as under:-

a] Subhash Salunkhe (the first informant) is the resident of Banda, Tal. Sawantwadi, Dist. Sindhudurg. He deals in the business of scarp. His brother Vijay Salunkhe (deceased Vijay) and brother in law Vikas Gosavi (deceased Vikas) are also engaged in scarp business. On 27<sup>th</sup> June, 2019 they had left Banda in a WagonR car bearing registration No. MH- 07-AG-1477 to Mangaon, Dist. Raigad

to meet Ashok Hiram (accused No. 1). Till 30<sup>th</sup> June, 2019 deceased Vijay was in touch with his wife Chanda, on phone. Thereafter, Chanda could not contact either the deceased Vijay or Vikas. Despite search, deceased Vijay and Vikas could not be located. The first informant and his relatives went to the house of accused No. 1 Ashok Hiram. He was not present thereat. He informed that he was at Baramati. Later on accused No. 1 Ashok switched off his phone.

b] On 4<sup>th</sup> September, 2019, pursuant to an intimation, the informant and his relatives visited a gorge, near Pimpri Point valley. They found a WagonR car with two human skeletons in burnt condition therein. Wagon R was also burnt. However, on the basis of Chassis number, the first informant could identify the said vehicle. Ashok, accused No. 1, was still untraceable. Thus, the first informant lodged report against Ashok Hiram of having caused the death of deceased Vijay and Vikas and also caused disappearance of the evidence so as to screen himself from legal punishment.

4. Investigation commenced. The applicant and the co-accused came to be arrested on 17<sup>th</sup> September, 2021. It transpired that the applicant and the co-accused Ashok Hiram, Shankar Hiram, Ganesh Pawar and Lahanya Jadhav had committed the murder of the deceased by strangulating them, they were robbed of the cash and

valuables and thereafter they were set on fire along with WagonR as Ashok Hiram (accused No. 1) had a financial dispute with the deceased. Post completion of investigation, charge-sheet has been lodged.

5. In the intervening period, co-accused Lahanya Jadhav came to be released on bail by this Court by an order dated 5<sup>th</sup> April, 2021. Thereupon, the applicant preferred an application for bail before the learned Additional Session Judge. The learned Judge declined to exercise the discretion in favour of the applicant opining, inter alia, that the discovery made by the applicant under section 27 of the Evidence Act leading to recovery of wallet of the deceased Vikas and Vijay squarely incriminated the applicant and, therefore, the applicant was not entitled to claim parity with co-accused Lahanya Jadhav, who was released on bail.

6. I have heard Ms. Shubhangi Parulekar, learned counsel for the applicant, and Mrs. Dabholkar, learned APP, for the State at some length. With the assistance of the learned counsel for the parties, I have perused the report under section 173 of the Code and the documents annexed with it.

7. At the outset, it is imperative to note that the prosecution case rests on circumstantial evidence. Learned counsel for the applicant would urge that none of the circumstances, pressed into service against the applicant, incriminate the applicant. It was further submitted that, in any event, the chain of circumstances cannot be said to be complete and the material on record does not justify the only hypothesis that the offences were committed by the applicant. Since the investigation is complete and the applicant has been in custody for almost three years, further detention of the applicant, in the backdrop of the weak character of the circumstantial evidence would be unwarranted.

8. Initially, Mrs. Dabholkar, learned APP endeavored to mark out the distinction between the roles attributed to the applicant and the co-accused Lahanya Jadhav, who is released on bail. Mrs. Dabholkar, later on, fairly submitted that the role attributed to the applicant and co-accused Lahanya by Rohidas Jadhav, the witness who claimed to have seen the burning car and all the accused in the vicinity thereof, cannot be said to be materially distinct.

9. The prosecution seems to bank upon the circumstances of two of the accused having collected petrol from Gangaram Margale,

who runs Jay-Malhar Hotel at Vandre Cross (Phatak), Nive. He states that on 30<sup>th</sup> June, 2019 at about 6.30 pm two persons of Katkari community had came to his hotel and he had given two liter petrol, considering their need. Savita Margale, the wife of Gangaram Margale, states about such visit of two persons from Katkari community to fetch the petrol from her husband. Neither Gangaram nor Savita have named those two persons, nor described their features. It does not appear that any endeavour was made to fix the identity of the applicant and co-accused by holding T.I. parade. This circumstance, therefore, prima facie, does not seem to have any incriminating tendency.

10. The statement of Rohidas Jadhav which was recorded on 23<sup>rd</sup> September, 2019 was pressed into service on behalf of the prosecution. Rohidas states about the presence of the accused at Vandre Phata on the day of occurrence at about 5 pm. At about 6 pm, while he was on his way to Pimpri on foot, he had seen accused Shankar Liham and Lahanya Jadhav proceeding towards Vandre cross (phata) to fetch petrol. When he reached near the gorge at Kundlika valley, he noticed a burning car. While he was proceeding towards the said car, the applicant and the co-accused rushed towards him. Accused No. 1 Ashok Hiram admonished him not to

proceed towards the said car.

11. While releasing the co-accused Lahanya Jadhav on bail, this Court, in the context of aforesaid statement of Rohidas, observed as under:-

9. Apart from these two witnesses there is another witness Rohidas Jadhav. He has named the present applicant and others. He had seen the applicant at around 6.00 p.m. He has mentioned that the applicant and Shankar Hiram were travelling on their motor cycle. They had told this witness that they did not have enough fuel and they wanted to buy it. This witness was going towards Pimpri Kundalika valley. At about 6.00 p.m. he saw a car engulfed in flames. This witness tried to go near that car. At that time the present applicant and other accused stopped him from going there. This witness had stated that he was also threatened.

10. This witness thus makes some reference to the present crime. However, his statement was recorded on 23/09/2019 after the applicant's arrest. This witness had not explained why he had not told this story to any Police Officer, prior to recording of his statement. Because of this delay, his statement becomes doubtful to some extent.

12. Evidently, the statement of Rohidas Jadhav was recorded post arrest of the applicant and the co-accused and no explanation was forthcoming regarding the delay in reporting the said incident by Rohidas Jadhav. The utility of the aforesaid statement against the applicant is, therefore, fraught with same infirmities, as noted qua the co-accused.

13. The third circumstance is of discovery. On 17<sup>th</sup> September, 2019 the applicant allegedly made a disclosure statement to show the place where the leather wallet of deceased Vijay and Vikas was concealed after removing cash therefrom. The applicant allegedly led the police party to a tin shed behind Hotel Lakhan and took out a leather wallet concealed in the bushes. The said leather wallet contained the Aadhar card and Pan card of the deceased Vikas.

14. This discovery is strongly relied upon by the prosecution to connect the applicant with the offence. Apparently, the discovery does not appear to be completely free from infirmities. The disclosure statement indicates that the applicant had stated that he would show the wallet of both Vijay and Vikas. Conversely, it does not refer to the wallet being thrown along with documents of the deceased Vikas. Secondly, the prosecution claims that the wallet of Vikas and his Aadhar and Pan card, were recovered.

15. Whether the disclosure statement distinctly relates to the facts thereby discovered would thus be a matter for trial. Consequently, in absence of any other evidence, the extent to which a discovery under section 27 of the Act would advance the cause of the prosecution, would also be a matter for consideration at the

trial.

16. The upshot of the aforesaid consideration is that apart from the evidence of discovery prima facie there does not appear to be any clinching circumstance against the applicant. He is in custody since September, 2019. Investigation is complete for all intent and purpose. It is unlikely that the trial can be completed within a reasonable period. The co-accused who is ordered to be released on bail, prima facie, appears to be similarly circumstanced.

17. In the aforesaid view of the matter, I am persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

### **ORDER**

- 1] The application stands allowed.
- 2] The applicant Ganesh Raghunath Waghmare be released in C.R. No. 330 of 2019 registered at Paud police station, Pune on furnishing a P.R. Bond in the sum of Rs. 30,000/- with one or two sureties in the like amount, to the satisfaction of the learned Additional Sessions Judge.
- 3] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution

witnesses.

4] The applicant shall furnish his permanent address and contact details to the Inspector of Police, Paud police station within a week of his release from prison and intimate the change, if any.

5] The applicant shall regularly attend the proceedings before the learned Sessions Judge.

6] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)