

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 1508 OF 2023

Sopan s/o Sadashiv Borade
Age: 37 years, Occu. Agri,
R/o: Shantinagar, Mantha,
Tq. Mantha, Dist. Jalna.

... Applicant

Versus

The State of Maharashtra

... Respondent

...

Mr. P. P. More, Advocate for the Applicant
Mr. K. S. Patil, APP for the Respondent/State

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 08.09.2023

PER COURT:-

1. Heard learned Advocate for the applicant and learned APP for the State.
2. The applicant is seeking regular bail in connection with Crime No.132/2023 registered with Mantha Police Station, District Jalna for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code [for short 'IPC'].
3. The investigation was set in motion on the informant given by one Satish Bhaurao Kayede. It is alleged that on 08/04/2023, he received a message that his brother is found in dead condition. Thereafter, he visited the postmortem room and confirmed that the dead body is of his brother and he noted various injuries on person of the deceased. He alleges that that some unknown person has

caused the murder of the deceased. The investigation was progressed on the basis of such information. During the course of investigation, in all four accused persons, including applicant were arrested. After completion of investigation, charge-sheet is filed. The applicant is behind the bar since 09/04/2023.

4. Mr. More, learned Advocate appearing for the applicant submits that case of the prosecution is based on circumstantial evidence. He would submit that the prosecution relies upon the last seen theory as the applicant was seen in the company of the deceased in a hotel where they consumed liquor. The second circumstance that is relied upon by the prosecution is the recovery of stick under Section 27 of the Evidence Act. He would submit the prosecution is also relying upon a confessional statement given before the police. Except this evidence, there is nothing in the charge-sheet, by which, the attribution of guilt can be made against the applicant. Mr. More, would submit that even by taking the circumstances as indicated above against the applicant, no case can be made out bring home guilt as alleged. Mr. More further relied upon the bail order in respect of co-accused dated 07/06/2023 passed by the Sessions Court. He would submit that even on the ground of parity, the applicant is entitled for grant of bail.

5. The learned APP vehemently opposes the application. He would submit that there are strong circumstances that would show involvement of the applicant in the commission of offence. Mr. Patil, would submit that there is CCTV transcript, which shows that, the applicant was in the company of deceased immediately before his death. He would further submit that the recovery of

incriminating material i.e. stick from the applicant is the one more circumstance that would be sufficient to conclude that the applicant is the prime offender and he caused the murder. Learned APP would further submit that there is strong motive as the deceased had illicit relationship with wife of the applicant. Hence, he urge to dismiss the application.

6. Having considered the submissions advanced, apparently the entire case of prosecution is based on circumstantial evidence. It is trite that the chain of circumstances must be complete and no other hypothesis going in favour of innocence of the accused could be logically made in facts of the case. Initially, on the complaint of brother of the deceased, accidental death was reported. The dead body of the deceased was found lying at the market-yard. The applicant was subsequently arrested. The prosecution has basically relied upon the fact that the deceased was seen in the company of the applicant in a hotel. The CCTV transcript of the same is made part of charge-sheet. The another circumstance that is relied upon by the prosecution is a recovery of stick. If both the circumstances are taken together, at the most it can be inferred that, the deceased was in the company of the applicant, however, there is no further link to bring home the allegation that the applicant is author of injuries suffered by the deceased. The recovery of the stick under Section 27 of the Evidence Act is of no consequence, since there is nothing to show that the said stick weapon of offence. Pertinently, the prosecution relies upon the confessional statement of the applicant, which is made before police. Such evidence could not be admissible for any purpose. The Sessions Court has already

granted bail to co-accused Akash vide order dated 07/06/2023 and specifically observed that so far as motive part is concerned, the statement of wife of accused no.1/applicant is not recorded. Apparently, there is nothing on record to show the motive behind the offence. On *prima-facie* consideration of the material in charge-sheet, the circumstantial evidence relied by the prosecution falls short to pinpoint guilt against the applicant. In that view of the matter, the case is made out to release the applicant on bail subject to certain conditions. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, namely, Sopan s/o Sadashiv Borade be released on bail in connection with Crime No.132/2023 registered with Mantha Police Station, District Jalna for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand Only) on the following conditions:
 - a. The applicant shall not tamper with the evidence.
 - e. He shall attend each and every effective date before the trial court.
- (iii) Bail Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE