

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1578 OF 2023**

**BHAGWAN DHONDU MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. Sunil B. Surse, Advocate for the Applicant.
Mr. S. B. Narwade, APP for Respondents-State.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 14th SEPTEMBER, 2023.**

PER COURT:-

1. The applicant seeks regular bail in connection with Crime No.127/2022 registered with Kasoda Police Station, Dist. Jalgaon for the offence punishable under 302, 201 of the Indian Penal Code.

2. On 16.09.2022 a report was lodged by Lady Police Patil informing that a dead body is found floating in Girna River. The Accidental Death No.20/2022 was recorded under Section 174 of the Criminal Procedure Code. The dead body was in a decomposed state. The investigation progress, efforts were made to establish identity of the dead person. During the enquiry, it was revealed that one Satyavan Dhondur Mahajan was missing since more than five days. He was residing in the village alongwith his brother. There were dispute amongst them. Therefore, serious doubt was raised against the applicant, who is brother of the Satyavan that he might have committed murder. The applicant has been arrested from Erondol Bus Stop. The investigation was progressed and charge-sheet is filed against applicant for the offences punishable under Sections 302, 201 of the Indian Penal Code. The applicant is behind the bar since

more than one year. His plea for grant of regular bail has been rejected by the Sessions Court vide order dated 24.04.2023.

3. The learned Advocate appearing for the applicant would submit that the case of the prosecution is based on circumstantial evidence. The dead body was found in decomposed state. There is nothing to establish that it was the Satyavan. He would submit that the blood samples were collected, however, there is no report of Chemical Analysis to link the blood samples with that of the deceased. The DNA report is also not procured. He would further submit that the dead body was found at the distance of 12 kilometer away from the village of the applicant. The allegations are made that it was carried on bicycle, which is highly impossible. He would further submit that the alleged confessional statement is not recorded in accordance with law. Hence, he urges for grant of bail to the applicant.

4. The learned APP vehemently opposes the application. He would submit that the applicant was residing alongwith the deceased brother. Although, he was missing for more than 5 days, no report has been lodged by the applicant. By inviting attention of this Court to the various statements of the witnesses, he would submit that the applicant had dispute with his brother. He was insisting to sale the ancestral property i.e. house where they were residing together. There was strong motive for the applicant to cause murder of his brother. The learned APP would also invite attention of this Court to the spot panchanama. The Forensic Laboratory team was present at the time of said panchanama. The blood stained tin and other articles were seized. There is no explanation from the accused in respect of the blood stained

articles found at his home. He would, therefore, submit that there is sufficient material against the applicant to link him with commission of the offence.

5. Having considered the submissions advanced, apparently the dead body was found in the River and it was in decomposed state. Although, DNA samples were collected, there is no report to establish identity of the deceased. The prosecution relies upon the statement of the Vasudeo Dhondur Mahajan, who is brother of the deceased as well as the applicant. However, his statement recorded under Section 161 of the Criminal Procedure Code dated 17.09.2022 shows that he is not certain about identity of dead body to be of his brother. Therefore, on the basis of the evidence in the charge-sheet, it is difficult to establish identity of the dead body. Although, the applicant is alleged to be the author of the injuries found on the dead body, no incriminating material is available on record by which the applicant can be linked with the injuries found on the dead body. The blood stained articles seized during the spot panchanama were sent for forensic test, however, there is no report to confirm that the articles recovered had blood stains of the deceased. Although, the evidence on the record raises suspicion over the conduct of the applicant, that itself would not be sufficient to *prima facie* record finding that he is author of the death of his brother. The applicant is behind the bar for almost one year. Till this date, charge is not framed. The trial will take its own course. Further detention of the applicant would not enure any benefit. Hence, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.

(ii) The applicant, Bhagwan Dhondu Mahajan be released on bail in Crime No.127/2022 registered with Kasoda Police Station, Dist. Jalgaon for the offence punishable under 302, 201 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

- a. The applicant shall not tamper with the prosecution evidence in any manner.
- b. The applicant shall attend the proceedings before the Sessions Court on each and every effective date.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE