

AGK

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

BAIL APPLICATION NO.1123 of 2023

Shambhuraj Manik Patil	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Satyavrat Joshi i/by Mr. Ashish S. Vernekar for the applicant.

Ms. Rutuja Ambekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 24, 2023

RC.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.270 of 2019 registered with Shirolu MIDC Police Station, Kolhapur for offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860.

2. The case of the prosecution in short is that deceased Ganesh Lohar was resident of Dagade Galli. He was plumber by profession. On 26 December 2019 he went for work but did not return. On 27 December 2019 at about 9.00 p.m. informant received call from his father informing about murder of one person at Mahat Katta. When the informant rushed to the spot, he identified as dead body of Ganesh. Stones and liquor bottles were scattered near the spot.

He, therefore, lodged report on 17 December 2019.

3. According to prosecution, the case is based on circumstantial evidence. The circumstances, according to prosecution, are: (i) last seen; (ii) recovery of mobile; and (iii) motive.

4. According to the applicant, co-accused having similar role has been released on bail by this Court in Bail Application No.1269 of 2021 by order dated 11 August 2021. However, learned APP disputes the position by submitting that recovery of mobile from the applicant distinguishes the circumstances.

5. On perusal of the order passed by this Court, it appears that this Court has considered circumstance of last seen. The said circumstance has been considered by this Court stating that there is possibility that the accused parted ways outside bar.

6. The circumstance of recovery of blood stained clothes from co-accused Digvijay is also considered by this Court by observing that the report is awaited. Therefore, except recovery of mobile phone which allegedly is the motive for the crime, the role attributed to the co-accused who has been released on bail is similar.

7. On prima facie consideration of the material at this stage, the mobile phone recovered at the instance of the applicant at this stage is material insufficient to connect the said cell phone with that of the deceased. Ultimately, it is for the prosecution this fact during trial. The prosecution needs to prove the circumstances and complete chain to hold the applicant guilty of offence alleged.

8. Therefore, in my opinion, at this stage the role attributed to the applicant cannot be distinguished from the role of the co-accused who has been released on bail by this Court. The applicant has, therefore, made out a case for relief under Section 439 of the Criminal procedure Code, 1973 based on doctrine of parity.

9. Learned APP states that there are three antecedents to the discredit of the applicant; however, on perusal of the nature of offences alleged, none of the offence are against human body.

10. Moreover, the applicant was arrested on 27 December 2019. Charges are yet to be framed and it is unlikely that the trial will be over in near future.

11. On overall consideration of the aforesaid factors, the applicant has made out a case for release on bail. Hence, following order:

12. Hence, following order:

- a) The bail application is allowed;
- b) The applicant shall be released on bail in connection with C.R. No.270 of 2019 registered with Shirolu MIDC Police Station, Kolhapur for offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 on furnishing PR. Bond in the amount of Rs.25,000/- along with one or two sureties in the like amount;
- c) The applicant shall mark his presence before the concerned police station on first Saturday of every month between 11.00 a.m. to 2.00 p.m.;

d) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by the Court;

e) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;

f) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

13. The bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)