

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3878 OF 2022**

Ganesh Venkatesh RathodApplicant

Versus

The State of Maharashtra ...Respondent

Mr. Ritesh M. Thobde along with Mr.Sagar S. Tambe and Mr. Changdev Shingade i/b. Mr. Kamran Shaikh, Advocate for the Applicant.

Ms. Pallavi Dabholkar, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th AUGUST, 2023.

P.C. :

1. By this application, applicant is seeking bail.
2. Applicant along with five others is arraigned as an accused in C.R.No.181 of 2022 registered with Akkalkot South Police Station, District -Solapur Rural, for the offences punishable under Sections 302, 201,120-B, 364, 365 and 368 read with 34 of Indian Penal Code (for short "IPC") lodged at the instance of first informant Premdas Shrimant Rathod.
3. Prosecution case is that on 11th November 2021 at about 11.00 am Abhishek Rathod, brother of first informant, left house by

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informing that he is going to the village. Till evening, he did not return home. His mobile was switched off. On his search in village, he was not found. After two days, missing report was lodged with Akkalkot South Police Station. Thereafter, on 25th March, 2022, daughter-in-law of aunt of first informant viz. Priyanka Chavan disclosed to him that on 19th March 2022, accused No.1 Vitthal Chavan had come to her agricultural land along with other accused Nos.2 to 4 and threatened her that if she told police that he had taken Abhishek on the day of his missing to his agricultural land for eating jujube fruit, he will not spare her. She also told the first informant that on the day of missing of Abhishek, when she was present in the agricultural land of Umaji Rathod, accused No.1 - Vitthal Chavan and Abhishek came there and Abhishek was returning Rs.300/- to her, which was given to him as a loan, but she told him to keep it with him. Then, accused No.1 and Abhishek went to agricultural land of accused No.1. Accordingly, on 28th March 2022, the first informant lodged a complaint under Section 364, 368 read with Section 34 of the IPC against the accused No.1 and other co-accused.

4. It is alleged that during the investigation, it revealed that

the accused persons in furtherance of their common intention have committed murder of Abhishek by kidnapping him and destroyed the evidence by burying his body. Applicant was arrested on 9th August 2022 in connection with the said crime on the disclosure statement of co-accused Vikas Rathod. Since the date of arrest, applicant is in jail.

5. It is contention of learned counsel for applicant that the ingredients of offence under Section 302 of IPC are not made out against the applicant. The name of the applicant is not mentioned in the FIR. There is no evidence on record to show that applicant had acted in furtherance of common intention with co-accused. Co-accused - Sunita Vankeri has been released on bail by Sessions Court, Solapur. Learned counsel further submitted that there is huge time gap between the time the deceased was lastly seen in the company of the co-accused and the date on which his dead body was found. The identity of the skeletal remains as that of the informant's brother - Abhishek is not established by way of cogent and reliable evidence. There is no recovery of any incriminating articles at the instance of applicant. Hence, requested to allow the application.

6. It is contention of learned APP that applicant was involved

in the commission of offence. The statement of witness Harishcandra Chavan dated 9th May 2022 shows that on 11th November 2022 when he was standing in front of his house, he had seen Vikas Rathod and applicant going on their motorcycle and after some time accused No.1 and deceased Abhishek also went on motorcycle. At that time, accused No.1 - Vithal was driving the motorcycle. It shows that the day when deceased absconded, at that time, applicant was seen with accused No.1 and other co-accused. Learned APP further submitted that in the supplementary statement of witness Harischandra Chavan dated 11th August 2022 it is stated that there was some verbal altercation between him and applicant. Learned counsel further submitted that there are statements of witnesses which show the involvement of applicant in the said crime. If applicant is released on bail, he may influence prosecution witness or may abscond and trial may be delayed. Hence requested to dismiss the application.

7. I have heard both learned counsel. Perused F.I.R. and chargesheet.

8. Admittedly, initially case of missing in respect of Abhishek Rathod was filed on 11th November 2021. Thereafter on 28th March

2022 case of kidnapping and abduction was lodged against other accused. Name of applicant was not mentioned in that complaint. Applicant has been arrested on 9th August 2022 on the disclosure statement dated 7th August 2022 of Vikas Rathod who has given statement before the police. Thereafter, police recorded the statement of other witnesses. Except disclosure statement of accused - Vikas, there is nothing on record to attribute the role of applicant in the said crime. Applicant is permanent resident of Tandulwadi Baramati Pune. He is a student. If he remains in jail, it would affect his education.

9. In view of above, I pass following order :

ORDER

- (i) Applicant - Ganesh Venkatesh Rathod be enlarged on bail in Crime No.181 of 2022 registered with Akkalkot South Police Station, District -Solapur Rural, for the offences punishable under Sections 302, 201,120-B, 364, 365 and 368 read with 34 of Indian Penal Code, on executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (ii) Applicant shall attend the concerned police station once in

a month i.e. on first Saturday between 11.00 a.m. to 2.00 p.m. till framing of charge.

(iii) Applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.

(iv) Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

10. The application is allowed in the aforesaid terms and is accordingly disposed of.

11. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)