

AGK

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

BAIL APPLICATION NO.3781 OF 2022

Rashid Saifuddin Vajir

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Sandeep Koregave with Ms. Pallavi Karanjkar for the applicant.

Mr. Pandurang H. Gaikwad, APP for the respondent/ State.

Mr. Y.V. Kamble, Police Naik, Gokul Shirgaon Police Station, Kolhapur, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 26, 2023

P.C.:

1. The applicant/accused No.1 is seeking bail under Section 439 of the Criminal Procedure Code, 1973 in connection with C.R. No.I-54 of 2018 for offences punishable under Section 302, 201, 120-B read with Section 34 of the Indian Penal Code, 1860.

2. The case of the prosecution in short is as under. Accused No.1 (applicant) and the deceased were brothers. Their father Saifuddin Vajir had a factory at Gokul Shirgaon MIDC, Kolhapur under the name and style S.V. Engineering. The applicant was desirous of selling the plot and structure thereon to one Bhairu Dagadu More. However, the deceased was not willing to accept the

said transaction. The applicant had executed an agreement in favour of accused No.3 for sale of the said premises. On refusal on the part of the deceased, the applicant along with co-accused Nos.2, 4 and 5 hatched a conspiracy to eliminate the deceased. Pursuant thereto, on 4 November 2017 accused No.2, the applicant and accused No.5 accosted the deceased at Kaneri cross and forcibly made him to sit in the Maruti Swift Desire car of the applicant. They took him to a meadow land near a quarry at Tamgaon. The applicant and accused No.4 came called upon the deceased to agree for execution of sale deed; however, the deceased declined. The applicant and co-accused assaulted the deceased by fist and kick blows. The applicant gave blow of iron rod on the head of the deceased. The deceased succumbed the injuries. His body was tied to two cement polls by nylon rope and was thrown in the quarry water.

3. On 24 March 2018, decomposed body of the deceased was found floating on quarry water. The deceased was identified. The applicant and other co-accused were arrested. The applicant was arrested on 29 March 2019. The investigating agency completed the investigation and filed charge-sheet.

4. The applicant applied for bail before the learned Sessions Judge under Section 439 of the Criminal Procedure Code, 1973 which came to be rejected. The applicant has, therefore, filed present bail application.

5. According to applicant, the case of the prosecution is based on circumstantial evidence. There is no complete change of

circumstance which points out towards the guilt of the applicant. Other co-accused have been released on bail. There is no material to connect the applicant with alleged crime.

6. Per contra, learned APP relied on statements of wife of the deceased and other witnesses to indicate strong motive of of the applicant. According to him, the applicant was the beneficiary of transaction sought to be executed between the applicant and accused No.3. He submitted that the applicant is not entitled to claim parity as the role attributed to other accused are different.

7. I have given anxious consideration to the statements of the parties. The case of the prosecution is based on circumstantial evidence. The circumstance alleged against the applicant is the transaction of sale of factory at Gokul Shirgaon MIDC to accused No.3. Without the consent of the deceased, the transaction could not have been completed and, therefore, the applicant could not get benefit of his share in the factory.

8. Learned APP has relied upon the statements of Notary to indicate the nature of transaction between the applicant and accused No.3. The said material in the form of statements of wife and Notary at this stage may be relevant to indicate motive; however, based on such circumstance in absence of additional circumstance, it cannot be said that the prosecution has made out a prima facie case.

9. Though there is prima facie material to indicate that the relationship between the applicant and the deceased was not cordial and the deceased was not giving consent for sale of the

factory, but the said circumstance on its own is not sufficient to make out prima facie case against the applicant in the absence of other circumstances having requisite incriminating tendency are not brought on record.

10. Moreover, the applicant is in custody since 29 March 2018. Though in the trial five witnesses have been examined, however six witnesses are yet to be examined. In absence of prima facie case, further detention of the applicant is unlawful. Hence, following order:

- a) The applicant be released on bail in connection with C.R. No.I-54 of 2018 for offences punishable under Section 302, 201, 120-B read with Section 34 of the Indian Penal Code, 1860 on furnishing PR. Bond in the amount of Rs.50,000/- with one or two sureties in the like amount;
- b) The applicant shall mark his presence at the concerned police station on first Saturday of every month between 11.00 a.m. to 20.00 p.m. till conclusion of the trial;
- c) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses;
- d) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and co-accused and the trial court shall not be influenced by any of observations made hereinabove.

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

(AMIT BORKAR, J.)