

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

BAIL APPLICATION NO.141 OF 2023

Sunil Rakhmaji Dongare ... Applicant
Vs.
State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO.412 OF 2023**

Madhukar Somaji Sonawane ... Applicant
Vs.
State of Maharashtra ... Respondent

Mr. Sudarshan Salunkhe with Mr. Prabhanjan Gujar for the Applicant in BA No.141/2023.
Mr. Aniket Vagal with Mr. Kunal Pednekar for the Applicant in BA No.412/2023.
Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 28TH JUNE 2023

PC:-

1. Heard learned Advocate Shri Salunkhe for the Applicant-accused No.1-Sunil in Bail Application No.141 of 2023, and learned Advocate Shri Vagal for the Applicant-accused No.2-Madhukar in Bail Application No.412 of 2023 and also heard learned APP for the Respondent-State.

2. Both the Applicants are charge-sheeted for committing murder of the deceased-Amol Dongare. Admittedly, there is no direct evidence available but the case was based on circumstantial evidence. The missing complaint was filed by the Applicant-Sunil Dongare on 18th November 2021, with Sinhgad Road police station, Pune. According to the Applicant, since 17th November 2021, after they have come near Nanhe gaon, Mumbai-Bengaluru highway and after the Applicant-Sunil has dropped deceased-Amol, the deceased was not in contact. The Applicant-Sunil has inquired with the relatives and friends, however, he could not be traced and that's why missing complaint is filed (page 121).

3. Furthermore, there is a complaint lodged by the wife of deceased on 24th November 2021, with Satara City police station, (page 13). The dead body in decomposed state was found in the water accumulated near stone quarry on Satara Road on 22nd November 2021, by the Satara City police station, (page 59). They have started inquiry under section 174 of the Code of Criminal Procedure. However, when Kajal, the wife of

deceased expressed suspicion over these two Applicants, the police have registered the offence against both the Applicants under sections 302, 201 read with 34 of IPC.

4. Both the Applicant came to be arrested and they are charge-sheeted. In order to show the involvement of these Applicants, the prosecution relied upon the following circumstances :

- (a) Supplementary statement of Kajal, wife of the deceased recorded on 12th July 2023, (page 43). Madhuri, wife of the Applicant-Sunil always used to call deceased-Amol, to her house and they used to talk on mobile. Kajal, wife of the deceased also inquired with Madhuri about relationship and she told that they are brother and sister. Further motive, Kajal has attributed is about dispute on account of accounts in between deceased-Amol on one hand and the Applicant-Sunil on the other hand.
- (b) Though the opinion is reserved about cause of death, there is fracture on the skull found on the dead body and the post mortem report is on page 46. The dead body was found in

accumulated water near stone quarry.

- (c) Iron pipe recovered at the instance of the Applicant-Madhukar on 24/11/2021, (page 67).
- (d) The bag containing clothes of the deceased was recovered at the instance of the Applicant-Sunil (page 71).
- (e) During house search of the Applicant-Madhukar, certain articles were seized including skeleton of bones and other parts of body of certain birds were found, which suggest that the Applicant-Madhukar was practicing black magic.
- (f) The pendrive seized on 4th November 2021, containing CCTV footage recorded from the cameras installed at Khed-Shivapur Toll Naka (page 92).
- (g) The panchnama about seizure of clothes found in the bag and they were identified by the first informant, wife of deceased (page 95).
- (h) Giving to the false missing report, by the Applicant-Sunil on 18th November 2021 (page 121).
- (i) Statements of one Shri Sitaram Dongare , who is father of the deceased, and one Nitin Dongare, who is relative of

the deceased are recorded at pages 130 and 132, and they are recorded on the point of last seen together.

- (j) Statement recorded of witness Subhash Gaikwad, who is attached to Sinhgad police station on 14/02/2021. He had inquired with the Applicant-Sunil about whereabouts of the deceased and his conduct of giving evasive replies. (page 156).
- (k) Call details report belonging to the mobile of Applicant-accused-Sunil (page 277) thereby showing the tower location in and around Satara where the dead body was found in water.
- (l) Subscriber details on page 273 being of the Applicant-Sunil.
- (m) The panchnama which is carried out on 11/03/2023, wherein Chaya Maske, who is sister of deceased has identified on one occasion, that the Applicants and deceased sitting together in the tempo and has identified both the Applicants-accused sitting in the tempo on another occasion.

5. As against this, learned Advocate Shri Salunkhe submitted that the circumstances mentioned above are not sufficient to warrant detention of his client any more. He relied upon the following judgments :

- (i) ***Babasaheb Vishwanath Survase Vs. State of Maharashtra*** reported in ***AIR Online 2022 Bom. 6420***
- (ii) ***Dataram Singh Vs. State of Uttar Pradesh*** reported in ***2018 All SCR (Cri.) 371***

6. Mr. Salunkhe further pointed out lacunae in the materials collected on behalf of the prosecution which are as under :

- (a) Even though the pendrive is seized containing the CCTV footage collected from two Toll Nakas, i.e. (i) Khed-Shivapur Toll Naka, and (ii) Talbhid Toll Naka. According to him there are no dates, thereby mentioning on which dates these footage were recorded into cameras.
- (b) Kajal, wife of the deceased, even though gave statement on 23rd November 2021, (page 141) before the Sinhgad Road police station, she has simply said about carrying on

business by his husband-Amol and the Applicant-Sunil, except that she has not said anything, thereby raising suspicion against any of the Applicants.

- (c) The suspicion raised in the complaint dated 24/11/2021 by wife of the deceased is after thought and she is not an eye witness.
- (d) Yet the cause of death is not ascertained, that's to say whether the deceased has died due to injuries caused to his person or whether he has died due to drowning. He submitted that the panchnama which is produced before the Court dated 11/03/2023 was carried out subsequently, and that is not tendered before the trial Court.

7. As against this learned Advocate Shri Vagal made following submissions :

- (a) Except the seizure of iron pipe and certain articles found from his house, there is absolutely no material against his client.
- (b) Even the place from where iron pipe was recovered was

already known to the police.

- (c) The statements recorded of Sitaram Dongare, father of deceased, and Nitin Dongare, who is the cousin brother of the deceased. Asha Dongre, mother of the deceased were recorded after delay of almost 18 days and earlier, they have not said anything about witnessing the deceased and the Applicants.
- (d) That there is no CDR report so far as Applicant-Madhukar is concerned.

8. As stated above, the case is based on circumstantial evidence. On the basis of these circumstances, whether it can be said that the chain of circumstances is established or not, can only be considered at the time of trial. At this stage, the Court has to see whether these materials are sufficient to warrant further detention of the Applicants in the jail.

9. In case of ***Babasaheb Survase***, this Court (Aurangabad Bench) has granted bail to co-accused when there were only circumstance of last seen together and call details record. Whereas in case of ***Dataram Singh***, the observations in earlier

judgments were referred in para 6, and it is observed that grant of bail is rule and refusal is the exception, and there should not be detention by way of pre-trial punishment.

10. It is important to note that the Applicant-Sunil, who was running business of transport along with deceased has lodged missing complaint on 18th November 2021. The timing referred in all these documents are very relevant. As submitted by learned APP, he has said that on 16/11/2021 at about 1 pm, he and deceased-Amol left Bengaluru for retuning to Pune. The Applicant dropped the deceased near Nanhe hotel, Mumbai-Bengaluru highway. On 18th November 2021, the Applicant after unloading went to his house. On this background, the statement of relatives of the deceased are relevant.

11. The father of deceased – Sitaram has stated that on 10th November 2021, his son Amol had come to village Kotarban while on his way to Aurangabad went to Aurangabad. On next day, he came to village Kotarban i.e. on 11/11/2021. The deceased has planned to go to Bengaluru and he has told that he was assisted by Sunil and Madhukar. He assured that he will

return on 17/11/2021. The witness, father of the deceased had gone to Yetar bhuva chowk for dropping his son, Amol, at that time both the Applicants were there and they travelled along with deceased to Bengaluru. The deceased has not returned on 17/11/2021. On the next day, when the witness telephoned deceased, it was told that the deceased is proceeding to Pune from Bengaluru. After that the witness could not establish contact with the deceased. The statement of cousin brother Nitin Dongare and Asha Dongare are on the same lines.

12. So it is important to note that from 11/11/2021, the witness has said that the deceased and both the Applicants left their village for going to Bengaluru.

13. The prosecution had tried to establish the link when they have recorded the statement of constable Subhash Gaikwad. He was inquiring about missing complaint filed by the Applicant-Sunil. When he inquired with Sunil, he tried to give evasive answers. In order to verify the movement, the witness collected CCTV footage from Khed-Shivapur Toll Naka. He noticed two persons sitting in truck and one person has covered his face

with handkerchief. The CCTV footage was shown to the mother of deceased and she has identified that the person sitting near driver is her husband. The tower location was found near Satara. The wife of deceased has identified dead body when it was found by Satara City police station in water near stone quarry.

14. Even though it is true that the CCTV footage was viewed, subsequently it is matter of record and that said truck was seized earlier, when the charge-sheet was filed, they are on page 103 to 106. Even though it may be true that yet the cause of death is not finally ascertained, there are injuries noticed over the scalp. It is also true that DNA examination is pending. Further, wife of deceased has identified dead body on the basis of some name inserted on the hand.

15. It is also true that at the instance of the Applicant-Madhukar, the iron pipe is seized whereas at the instance of the Applicant-Sunil, bag is seized which contains articles which were subsequently identified. The tower location of the Applicant-Sunil was found in and around spot wherein dead body was found.

16. So it is true that there are no eye witnesses. Above materials which are collected during investigation. After considering above materials, it may be true there may not be motive alleged against the Applicant-Madhukar and motive is alleged against the Applicant-Sunil.

17. Considering the above circumstances, I do not feel that the Applicant-Sunil is entitled to be released on bail. Even though there are certain lacunae, I think those materials are sufficient to show his involvement. He is person who has lodged the missing complaint which was subsequently found to be untrue. He is person who has accompanied the deceased and that is witnessed by relatives of the deceased. So no case is made out for the Applicant-Sunil. So far as the Applicant-Madhukar is concerned, he was identified by the sister of deceased as sitting on both the occasions.

18. In view of above I am inclined to grant bail to the Applicant-Madhukar for the reason that there is not motive alleged against him and there is no circumstance just like giving of false missing complaint. The other circumstance as recovery

of iron pipe, but there are no blood stains on the said iron pipe.

So the case for grant of bail is made out. Hence, the following order is passed:

ORDER

- (a) Bail Application No.141 of 2023, filed by the Applicant-Sunil is rejected.
- (b) The Applicant-Madhukar Sonawane in Bail Application No.412 of 2023. be released on bail in connection with C.R. No.1054 of 2021, registered with Satara City police station for the offences punishable under sections 302, 201 read with 34 of IPC and under section 3 of Maharashtra Prevention and Eradication of Human Sacrifice and Inhuman Evil and Aghori Practices and Black Magic Act, 2013, on furnishing personal bond and surety bond of Rs.50,000/-.
- (c) The Applicant-Madhukar shall not threaten the prosecution witnesses or allure them in any manner, and shall attend the trial Court punctually.
- (d) Needless to say, violating of the condition above will make

the Applicant-Madhukar liable for cancellation of bail, after notice to the Applicant.

- (e) If the trial will not start within a period of one year from today, the Applicant-Sunil in Bail Application No.141 of 2023, is entitled to again apply for bail.

19. Both Bail Applications are disposed of accordingly.

20. These are my prima facie observations and the trial Court may not be influenced by that.

21. All the parties to act on an authenticated copy of this order.

(S. M. MODAK, J.)