

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2812 OF 2021

Swapnil Dharma Warkute ... Applicant

V/s.

State of Maharashtra ... Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 619 OF 2022

Kiran Jayram Malik ... Applicant

V/s.

State of Maharashtra ... Respondent

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Mr. Raju D. Suryawanshi, Advocate for Applicant in Criminal B.A. No. 2812 of 2021.

Mr. Ashok S. Pandire a/w. Mr. Sahil A. Pandire for Applicant in Criminal B.A.No. 619 of 2022

Ms. Anamika Malhotra, APP for Respondent-State.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 6th SEPTEMBER 2023

P C:-

1. By these Applications, Applicants are seeking bail in C.R.No. I-138 of 2017 registered with Murbad Police Station, District Thane

for the offences punishable under Sections 302, 396, 201, 120(B), 34 of Indian Penal Code, 1860 (for short “IPC”).

2. It is the case of prosecution that deceased was jeep driver. Applicants and other co-accused took his jeep on rent and took him to secluded place and they murdered the deceased and threw his body in forest. Initially complaint was lodged against the unknown persons for murder of deceased. In investigation, Applicants and other co-accused have been arrested in connection with the present crime.

3. It is contention of learned Counsel for the Applicants that Applicants have been falsely implicated in this case. Applicants are in jail for more than five years. Investigation is completed and charge-sheet has been filed. Moreover, two co-accused have been released on bail by this Court. Hence, Applicants are entitled for bail on parity.

4. Learned APP submitted that, there are statements of eye witnesses, who had seen Applicants with deceased before the murder of deceased. Some articles are recovered at the instance of Applicants which shows their involvement in the crime. Hence, requested to reject the Applications.

5. Learned APP submitted that in the bail orders passed by this Court, co-accused are released on bail on the ground of Test Identification Parade those co-accused were not identified and it was necessary to hold Test Identification Parade in respect of Applicant's as eye witnesses had last seen them with deceased and they knew deceased as well as Applicants.

6. I have heard both the learned Counsel.

7. Initially, FIR was lodged against the unknown persons. In the investigation, police has arrested Applicants and other co-accused. As per eye witnesses statements deceased was last seen with Applicants and other co-accused. This Court (Coram:M.S.Karnik) and (Coram: Sandeep K.Shinde,J.) have granted bail to co-accused. Though, learned APP submitted that, in earlier bail applications co-accused are released on the ground that Test Identification Parade was not hold, but the said bail orders have not challenged. In the statement of eye witness Mr. Vishwas Bhawarthe, he has stated that he had seen Applicant and co-accused Laxman @ Sonya Ghude, Vijay Wagh, Kiran Malik and Kiran Harad with deceased, thereafter dead body of deceased was found. The co-accused Kiran Harad and Laxman @ Sonya Ghude have been released on bail by this Court. Hence, Applicants are entitled for bail on the principle of parity, as

deceased was seen with Applicants and co-accused together and this Court has released the co-accused on bail.

8. In view of the above, I pass following Order:

ORDER

- (i) Applicants be enlarged on bail in C.R.No. I-138 of 2017 registered with Murbad Police Station, District Thane on executing P.R.Bond in the sum of Rs.25,000/- each with one or two solvent sureties in the like amount.
- (ii) Applicants shall attend the concerned Police Station once in a month i.e. on first Monday of the month between 11.00 a.m. to 3.00 p.m. till framing of charge.
- (iii) Applicants shall inform their 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) Applicants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

9. Both the Applications are allowed in the aforesaid terms and are accordingly disposed off.
10. All concerned to act on the authenticated copy of this Order.

(SHIVKUMAR DIGE, J.)

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