

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2324 OF 2022**

Umesh Rambharose Chaurasiya	...Applicant
vs.	
State of Maharashtra	...Respondent

Mr. Gaurav Bhawnani with Zeeshan Khan for the Applicant.
Mr. S. R. Agarkar APP for the Respondent-State.
Mr. M. B. Kale, API, Daighar police station present.

CORAM : S. M. MODAK, J.

DATED : 20TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The Investigating Officer is present. The deceased-Ganesh is son of the first informant-Suryanarayan Ramdulare Chaurasiya. He went missing from the house on 6th September 2021, at about 22.15 hours. He left the house for purchasing onions and potatoes from Bhiwandi. The house is situated at Diva. He had never returned. His dead body was found in Phadkepada lake on 8th September 2021 at 11.45 hours.
3. The police have initially registered the case of accidental death. They have inquired and ultimately on 4th January 2022, on the

complaint of father of the deceased-Ganesh Chaurasiya, the police have registered an offence under section 302 of IPC against present Applicant. The father of deceased is having suspicion that present Applicant, who is his cousin brother has taken deceased in auto rikshaw. When the deceased left house, he was wearing golden chain, having some cash amount and mobile.

4. The charge-sheet is already filed. The case is based on circumstantial evidence. The prosecution relied upon the following circumstances against the Applicant :

- (i) Statement of witnesses thereby stating that they have seen the deceased-Ganesh and present Applicant, lastly, on 6th September 2021 at night time. Few of these statements are of Mohit Shankarlal Chaurasiya (page 93) and Sanjay Manikchand Jaiswal (page 108) and there are two more statements.
- (ii) There are Call Data Records for the period 6th September 2021 to 7th September 2021, from the mobile handset of both the Applicant and deceased showing that both of them were moving in and around spot on incident, which is Phadkepada lake, which is in village Diva.

(iii) The Applicant was earlier convicted for the offence punishable under sections 328 and 379 of IPC by the Court of Sessions for Greater Mumbai in Sessions Case No.184 of 2018, page 204.

(iv) There is one more offence registered against the Applicant for similar type i.e. under sections 328, 363, 379 of IPC at Chuna-bhatti police station.

5. Learned APP submitted that the Applicant is in habit of committing similar type of offences and does not deserve bail.

6. Whereas according to learned Advocate for the Applicant, there are not sufficient materials collected during investigation so as to warrant further detention of the Applicant. He raised the following grounds :

(a) Even though the deceased went missing on 6th September 2022, and even though police were inquiring into accidental death for almost three months, the FIR is lodged after long delay on 4th January 2022.

(b) There was only suspicion raised against the Applicant at the time of lodging FIR and after FIR, the police could not collect any material so as to show involvement of the Applicant.

(c) There is no recovery at the instance of present Applicant.

- (d) The watch and golden chain was found on person of the deceased when they carried out inquest panchnama. It is on page 73. He want to suggest that reason for murder being theft is ruled out.
- (e) According to him, the post mortem report is submitted and the opinion is reserved, pending for Chemical Analyser's report page 91. Whereas viscera report is on page 83, which says that "no poison is detected".

7. Learned Advocate for the Applicant invited my attention to memorandum of postmortem examination which says that there were no injuries, external or internal, found on the body and result of diatom test is negative. He has clarified what is meant by diatom test. It says that there are 15,000 types of diatoms and half of them are found in fresh water and half in seawater. He want to suggest that the fact that if diatom test is negative, it indicates that he must have died prior to his body is thrown in pond/lake.

8. After considering submissions and perusing the charge-sheet, what I find that the case for regular bail is made out. Even though it may be true that the witness referred above have said about witnessing the Applicant-accused on 6th September 2021, except

these references, no material is pointed out to show involvement of this Applicant. Even though it may be true that the Call Data Records are there, it is sort of corroborative piece of evidence.

9. There is no recovery at the instance of this Applicant. Even though it is true that the police were investigating into accidental death since 8th September 2022, the FIR is lodged on 4th January 2023. It is only in the form of suspicion, so the case for bail is made out.

10. Even though it may be true that the Applicant was convicted earlier in one of the offence earlier, ultimately, the prayer for bail in this offence needs to be decided on the basis of material collected in this offence. Further more this Court while suspending sentence of the trial Court passed in Sessions Case No.184 of 2018, on 25/1/2021 passed on Interim Application (Stamp) No.4170 of 2020, of this Applicant has observed that there was no evidence to suggest that poison is administered.

11. The Applicant in this offence can be granted bail, at the most he could be put to strict conditions. Hence, the following order is passed :

O R D E R

- (a) The Applicant-Umesh Rambharose Chaurasiya be released on bail in connection with C.R. No.4 of 2022 registered with Daighar police station, Thane for the offences punishable under section 302 of IPC, on furnishing personal bond and surety bond of Rs.50,000/-.
 - (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
 - (c) The Applicant shall give attendance to the Daighar police station on every first Monday of every month from 3 pm to 5 pm for two years.
 - (d) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail, after notice to the Applicant.
10. Application is disposed of accordingly.
11. These are my prima facie observations and the trial Court may not be influenced by that.
12. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]