

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

BAIL APPLICATION NO.4244 OF 2021

Mubarak Pyarejahan Sayyad @
Babu @ Mubarak Roshan Piyara
Johan Sayed

... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Rahul Arote for the Applicant.

Mr. S.H. Yadav, APP for the State.

Mr. Dilip Rane, PSI, Aarey Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 26th APRIL, 2023.

P. C. :-

. This is an Application under section 439 of Cr.PC. filed by the aforesaid Applicant who is facing trial in Sessions Case No.221/2021 pending on the file of the Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi. The said case arises from C.R.No.695/2020 registered with Aarey Police Station, Mumbai for offences punishable under sections 302, 209 r/w. 34 of the Indian Penal Code.

2. Heard learned counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records prima facie reveal that Bhagwan Sabde had lodged FIR stating that his son-Ravi Sabde had left the house on 21/06/2020 and had not returned since then. Subsequently, the dead body was found in a creek near Dharavi Link Road, in decomposed state. It was sent for post mortem. The DNA report prima facie reveal that the body was of Ravi Sabde. The post mortem report does not give the cause of death and states that the 'opinion was reserved'. Learned APP states that till date, the Investigating Officer has not procured the opinion as to the cause of death.

4. The Applicant was arrested on a suspicion that he was involved in commission of murder of said Ravi Sabde. One of the circumstances against the Applicant is recovery of stone, chappal and shirt as per the disclosure statement made by the Applicant. It is to be noted that no blood stains were found on the stone allegedly recovered at the instance of the Applicant. The chappal recovered at the instance of the Applicant has not been identified as that of the deceased. The shirt is half-sleeve shirt. Whereas, the missing report reveals that the deceased had worn full-sleeve shirt as on the date he had left the house. Hence, the recovery of the aforesaid articles at the instance of the Applicant, would not prima facie link the Applicant with the said crime. The other incriminating

circumstances against the Applicant is the statements made by Susheel Kamble and Anand Dandu which was recorded in the month of December, 2020. These two witnesses who were in the age group of 15 to 17 years state that the Applicant had taken them to a creek and put his hand in the water and shown them the leg of a dead body and told them that he had committed murder of the said person. Prima facie, there is no material on record to indicate that these two witnesses were in any way associated with the deceased or the Applicant. There was no reason for the Applicant to take them to the creek and show them the body and to confess that he had committed murder of Ravi. These two witnesses had implicated the Applicant almost 06 to 07 months after the alleged extra-judicial confession. Apart from the statement of these two witnesses, there is no other prima facie material to link the Applicant with the crime. Hence, the Application is allowed on the following terms and conditions :-

- (i) The Applicant who is facing trial in Sessions Case No.221/2021 pending on the file of the Additional Sessions Judge, City Civil & Sessions Court, Borivali Division, Dindoshi arising out of C.R.No.695/2020 registered with Aarey Police Station, Mumbai, is ordered to be released on bail on furnishing P.R. bonds in the sum of Rs.40,000/- with one or two solvent sureties in the like amount ;

- (ii) The Applicant shall report to Aarey Police Station, Mumbai once in two months on the 1st day of the month until further orders ;
- (iii) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) The Applicant shall co-operate with the conduct of the trial and attend the trial Court on all dates, unless exempted.

5. Bail Application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)

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