

AGK

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

BAIL APPLICATION NO.3029 OF 2022

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Sanjay Sahebrao Waghmare

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Aniket Nikam with Mr. Amit Icham, Mr. Piyush Toshnival, Mr. Aashish Satpute and Mr. Varad Ozarkar for the applicant.

Ms. Rutuja Ambekar, APP for the respondent/ State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 11, 2023

RC.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.52 of 2019 dated 20 May 2019 registered with Nhava Sheva Police Station for offences punishable under Sections 302 and 120-B of the Indian Penal Code, 1860.

2. According to prosecution, on 19 May 2022 at about 11.00 p.m., his uncle namely Babu Gunjkar i.e. the deceased was playing cards with other family members. After some time, i.e. on 20 May 2022 at around 12.30 a.m. the applicant came there and offered the deceased to come along with him for drinking liquor and they both left for the same. The report alleges that after half an hour

later, co-accused namely Ashok Waghmare also left the place where they were playing card.

3. The report further alleges that the complainant called on the phone of the deceased but same was not answered and further the deceased was searched. The report alleges that at around 2.30 a.m. to 3.00 a.m. the deceased was found to be dead near a road going towards Ramshet Thakur Stadium from Javala Village, at the back side of Hi-tech Building, Ulve, Navi Mumbai with injuries to his head probably caused by means of big stones. Accordingly, first information came to be lodged.

4. The applicant was arrested on 7 February 2020. Thereafter, supplementary charge-sheet was filed against the applicant.

5. The learned Sessions Judge by order dated 21 September 2022 rejected the application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973. The applicant, therefore, filed present bail application.

6. On perusal of the charge-sheet filed under Section 173 of the Criminal Procedure Code, 1973 and supplementary charge-sheet, it appears that the case is based on circumstantial evidence. The circumstances alleged against the accused persons are (a) motive; (b) last seen; and (c) recovery of weapon.

7. On perusal of the material on record, it appears that the deceased accompanied applicant on motorcycle at 12.30 a.m. on 20 May 2022 while they were playing cards. Accused No.1 also left in the direction of Shelghar where applicant left along with the deceased. Though the witnesses have stated about presence of

unknown persons along with accused No.1 and their quarrel, no identification parade was carried out to connect the applicant with the said quarrel. At this stage, prima facie material on record is insufficient to conclude that the applicant was using cell number as alleged by the prosecution. However, factors such as last seen theory, recovery of weapon and CDR needs to be considered by the Trial Court during trial.

8. Moreover, accused No.1 who allegedly had motive to commit murder of the deceased as deceased had illicit relationship with his wife had been released on bail by the Sessions Court. Though the prosecution has alleged active role of the applicant, the prosecution needs to prove complicity of the applicant during trial.

9. On overall consideration of aforesaid factors, the applicant has made out a case for exercise of discretion under Section 439 of the Criminal Procedure Code, 1973. Hence, following order:

- a) The applicant be released on bail in relation with C.R. No.52 of 2019 dated 20 May 2019 registered with Nhava Sheva Police Station for offences punishable under Sections 302 and 120-B of the Indian Penal Code, 1860 on furnishing P.R. Bond in the amount of Rs.25,000/- along with one or two sureties in the like amount;
- b) The applicant shall mark his presence with the concerned police station on first Saturday of every month till conclusion of trial;
- c) The applicant shall remain present before the Trial Court on each and every date unless specifically exempted by

the Court;

d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court;

e) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

f) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

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

(AMIT BORKAR, J.)