

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

BAIL APPLICATION NO. 3851 OF 2022

Prakash @ Phakya Hirachand Ombase ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr. Shailesh S. Kharat - Advocate for the Applicant

Mr. H. J. Dedhia - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 11th JANUARY, 2023

P. C. :-

1. Heard learned Advocate Shri Kharat for the Applicant/Accused No. 1 and learned APP Shri Dedhia for the Respondent-State.

2. Pending inquiry and trial, the Applicant is praying for bail. He alongwith five others are prosecuted for committing murder of one Sachin @ Shetya Vishwanath Thakur in between intervening night of 02nd December, 2017 and 03rd December, 2017. The said Sachin was murdered by throwing big stone on his head at village Naikbomwadi, Taluka Phaltan, District Satara.

3. Initially, the offence was registered against an unknown

person on the complaint of one Hanumant Kisan Bichkule on 03/12/2017 with Phaltan Rural Police Station. When the identity of dead body was disclosed, the Police came to know that it is the present Applicant alongwith others who have murdered him. The bail is asked for on the ground of prolonged detention and on the ground of parity.

4. My attention is invited to various orders passed by this Court for co-accused Sushil Kumar Shinde, Kalim Alam Shaikh, Vaibhav Vankat Nagzarkar and Prashant @ Digya Bhanudas Dighe. Whereas earlier bail application filed by the present applicant was withdrawn on 05/12/2022. It is explained that it was filed through jail and that is why it was withdrawn instead of carrying out amendment therein.

5. Learned APP opposed the prayer for bail and according to him, the role of the present Applicant is different from the accused who have been granted a bail. He pointed out certain materials to me which were not considered by this Court earlier. The materials are as follows:

(a) The statement of the Sunil Thakur – brother of the

deceased. He got information on telephone from one Chikya Supdya Avchar on 02/12/2017. Admittedly, the Police have not recorded the statement of said Chikya Supdya Avchar. He came to know that all the accused persons have gathered behind Kunal hotel Kalewadi, Nakhatevasti, Pune in two swift cars and the said Chikya told witness Sunil Thakur to take back the deceased. Accordingly, witness Sunil did went there and requested the deceased to come back alongwith him. However it was refused by the deceased. There is emphasis on a reply given by the present Applicant @ Pakya that they are going for one marriage and abused witness with vulgar words.

(b) The statement of one Suman Sunil Nakade relative of the present Applicant. The Applicant alongwith other accused visited her house on 03/12/2017 at 6 a.m. in a car (which was used and seized during investigation) when asked, the Applicant gave explanation that they are going to Pandharpur.

(c) The statement of Nilesh Sunil Nakade another

relative of the present Applicant on the same line. In addition to above facts, he has also referred to co-accused Sushil Shinde who has driven that car.

(d) The statement of Balu Lokhande who has hired that car to the present Applicant. There is reference of co-accused Sushil who will be going to drive that vehicle.

(e) The statement of one Raju Abdul Pathan. He got information from brother of deceased Sachin when he was travelling to Satara alongwith said Sachin after they got information about murder of Sachin.

6. By way of reply, learned Advocate Shri Kharat submitted that all these statements were referred directly or indirectly in the Orders passed by this Court. I have read those orders. In the statement of the Sunil Thakur, the brother of the deceased, name of the applicant as Pakya is specifically referred. The bail to those accused was granted mainly for the reason that the statement of Chikya from whom Sunil Thakur received information and other factors like nothing incriminating was found in the vehicle, role

played by those Applicants, absence of eye-witnesses, recovery of blood stained clothes and absence of antecedents were considered by this Court.

7. So I am inclined to grant bail to the present Applicant. Admittedly, there is no statement of Chikya and even though the relatives of the present Applicant has said that the Applicant visited their house in the early morning of 03/12/2017 that circumstance is not sufficient to deny bail to the present Applicant. Even though it is true that above circumstances are pointed out on the behalf of the prosecution whether it will prove the complete chain or not can be considered at the time of trial.

8. Hence present Applicant deserves to be released on bail.

9. Hence following order :-

ORDER

- (i) Application is allowed.
- (ii) The Applicant –Prakash @ Phakya Hirachand Ombase be released on bail on furnishing PR bond and surety bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The Applicant shall give attendance to the Phlatan

Rural Police station on every first Saturday from 10 am to 12 noon until further orders.

- (iv) The Applicant shall stay outside jurisdiction of Phaltan Police Station until further orders except for the purpose of attending the Police station and attend the Court.
- (v) The Applicant shall furnish permanent address and contact details to the Inspector of Police of the concerned police station prior to release on bail and intimate the change, if any.
- (vi) The Applicant shall not threaten the prosecution witness.

10. Application is disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]