

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

**INTERIM APPLICATION NO. 462 OF 2023  
IN  
APPEAL NO. 1427 OF 2018**

Ravindra Badrinath Rathod  
Age: 26 years, Occ. Construction,  
R/at: Uttamnagar, Pune.  
(at present is in Satara Jail)

...Applicant  
(Org. Accused)

*Versus*

The State of Maharashtra  
(At the instance Bhuinj Police Station,  
Dist: Satara).

...Respondent  
(Org. Complainant)

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**Mr Aniket U. Nikam, i/b. Mr Aashish Satpute, for applicant.**

**Ms Pallavi Dabholkar, APP, for the Respondent-State.**

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**CORAM**

**M.S. Sonak &  
Jitendra Jain, JJ.**

**Reserved on 07 October 2024**

**Pronounced on 08 October 2024**

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**Judgment (Per MS Sonak J):-**

1. Heard Mr Aniket Nikam, instructed by Aashish Satpute, learned Counsel for the Petitioner and Ms Pallavi Dabholkar, learned APP for the State.

2. This is a bail application pending the disposal of Criminal Appeal No. 1427 of 2018 against the judgment and order by which the applicant was convicted for an offence punishable under Section 302 of the Indian Penal Code, 1860, and sentenced to undergo life imprisonment and pay a fine of Rs. 5,000/-.

3. On 15 September 2022, this Court made an order listing the Criminal Appeal for a final hearing in the week commencing from 3 October 2022 instead of deciding the bail application. However, till date, the Appeal has not been disposed of. Considering the pressure on the docket, it is unlikely that this Appeal would be disposed of early. In the meantime, the Applicant, arrested on 27 February 2016, has completed eight years and seven months of incarceration.

4. We have heard the detailed arguments made by Mr Nikam, learned Counsel for the Applicant and Ms Dabholkar, the learned APP for the State.

5. Admittedly, the conviction of the Applicant is based on circumstantial evidence. The learned Sessions Judge, in paragraph 30 of the impugned judgment and order dated 2 June 2018, has listed the following ten circumstances for convicting the Applicant:-

“(i) The illicit relationship between the accused and the wife of the deceased, which is the motive behind the crime.

(ii) The deceased lastly seen in the company of the accused.

(iii) Homicidal death of the deceased.

(iv) Recovery of stone used in the commission of crime.

- (v) Recovery of car used in the commission of crime and finding of chappal of the deceased in the car of the accused.
- (vi) Seizure of mobile handset of the deceased from the possession of mother-in-law of the accused.
- (vii) Recovery of original number plate of the car used in the commission of crime.
- (viii) CCTV footage of Toll Naka and Petrol Pump showing initially the presence of the deceased with accused and in the return journey only the presence of the accused in the car.
- (ix) Call Details Record of the Mobile of the deceased and the accused.
- (x) Criminal background of the accused.”

6. The evidence on record does establish that this was a case of homicidal death. Further, at least prima facie, there does appear to be evidence to suggest that there was an inappropriate relationship between the Applicant and the wife of the deceased (PW-2). However, regarding the remaining circumstances listed by the learned Sessions Judge, the Applicant has an arguable case as to why such circumstances may not be taken as proved beyond reasonable doubt and, further, based upon such circumstances, how the chain of circumstances would not be completed to exclude every possible hypothesis, other than the hypothesis leading to the guilt of the Applicant beyond reasonable doubt. These are only prima facie observations, but they need to be made because we propose to enlarge the Applicant on bail subject, no doubt, certain terms and conditions.

7. In the context of the last seen theory circumstance, the star witness for the prosecution is the deceased's wife (PW-2). She and the deceased's brother (PW-1) claim to have lodged a

missing complaint with the Police Station on the night intervening 18 February 2016 and 19 February 2016 (date of the offence). However, there was no reference in this complaint about the deceased last being seen with the Applicant. The Investigation Officer claims that he knows nothing about the missing complaint. The FIR was ultimately filed after eight days, i.e., 26 February 2016.

8. At least prima facie, there is no explanation about the non-mentioning of the Applicant and the deceased being together on the night intervening 18 and 19 February 2016 at the earliest opportunity. The investigation officer could not even produce tower location reports in the context of CDR, which was relied upon by the learned session judge.

9. To support the circumstance of the last-seen theory, the prosecution tried to rely on the CCTV footage at the Toll Plaza and at the Petrol Pump. Some prosecution witnesses admitted that this footage is unclear, and the Applicant cannot be seen in them. In any event, even the learned Sessions Judge held that this evidence of CCTV footage was inadmissible for want of a proper certificate under Section 65B of the Evidence Act.

10. Therefore, based on the oral and electronic evidence on record, the applicant has an arguable case to urge that this circumstance is not proved beyond reasonable doubt.

11. The learned APP stressed the circumstance of the recovery of the stone used to commission the offence. The DNA report indicates that the hair and blood of the deceased were on the said stone. Ms Dabholkar contended that substantial weight must be given to the

medical/scientific/DNA reports, which, according to her, clinches the issue.

**12.** Undoubtedly, considerable weight has to be assigned to medical/scientific/DNA reports. However, the evidence about the stone recovery, at least prima facie, may not meet with the rigours of Section 27 of the Evidence Act. In this case, the stone was recovered from near the crime site. The Police authorities were aware of the crime site and had also visited it earlier. The stone was retrieved from a public place accessible to all. In any event, even if it is held that the stone was recovered from some bushes in a public place, still, based only on this circumstance, it is arguable whether a conviction might be sustained.

**13.** The recovery of the Car, allegedly used for the commission of the offence, also does not prima facie meet with the rigours of Section 27 of the Evidence Act. The Car admittedly belonged to the Applicant and was allegedly 'discovered' from where it was parked on the street in front of the Applicant's house. However, Ms Dabholkar submitted that a Chappal, identified as belonging to the deceased, was also found in the Car. She submitted that since this part of the evidence was not even explained by the Applicant, the same incriminates the Applicant.

**14.** The incident date is the night between 18 and 19 February 2016. The FIR was lodged on 26 February 2016. The Applicant was arrested on 27 February 2016. The so-called recovery of the vehicle was on 28 February 2016. It is rather difficult to accept that the Chappal of the deceased remained in the Car for almost a week. No identification parade was

carried out, i.e., placing similar Chappals before the prosecution witnesses. The identification by PW-2, the wife of the deceased, with whom the Applicant was alleged to have had an improper relationship, may not be prima facie sufficient to hold that this was an incriminating circumstance which was proved beyond a reasonable doubt.

15. There are some problems with the recovery of the deceased's mobile phone. This mobile phone was allegedly recovered from the mother-in-law of the deceased. The mobile phone number was listed in the name of the daughter of the deceased. There is a discrepancy about the IMEI number because the Investigation Officer states that the number ends in 602, whereas the number deposited to by the other witnesses ends in 600. Mr Nikam relied on **Vijay Kumar Vs State of Rajasthan<sup>1</sup>** to submit that recovery from the custody of some other person may not be sufficient for bringing the case within Section 27 of the Evidence Act.

16. In this case, PW-1 was the complainant who lodged his complaint on 26 February 2016. However, he turned hostile and was cross-examined by the prosecution. In the cross-examination, he tried to support the prosecution case by retracting what he had stated in his chief. However, in the further cross on behalf of the Applicant, PW-1 reverted to his original statement. At least prima facie, not much credence can be given to the testimony of such witnesses.

17. On cumulative consideration of the above and having due regard to the law on proof by circumstantial evidence, we are satisfied that the Applicant should be enlarged on bail

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<sup>1</sup> 2014 3 SCC 412

pending the disposal of this Appeal since there is no likelihood of his Appeal being disposed of at an early date. As noted earlier, the Applicant has suffered incarceration for almost eight years and seven months up to now.

**18.** The learned APP, however, placed on record a chart showing that the Applicant was a habitual offender. The chart indicates that about eight theft cases were registered against the Applicant. Out of these, the Applicant has already been acquitted in four cases. There is also a reference to externment proceedings and chapter cases. Thus, it does appear that the Applicant's antecedents are problematic.

**19.** Still, based upon such antecedents alone, bail should not be denied to the Applicant in a situation where there is no likelihood of the Applicant's Appeal being disposed of early. Some stringent conditions can always be imposed upon the Applicant. If despite best efforts, speedy resolution of the appeal seems difficult and the applicant has already suffered incarceration of about eight years and seven months, a bail is due given the arguable issues discussed above in brief. If, while on conditional bail, the applicant breaches any conditions or indulges in criminal activities, the prosecution can always apply for cancellation.

**20.** After considering all the above circumstances cumulatively, we dispose of this Interim Application by making the following order.

**ORDER**

(i) The Applicant's sentence is suspended and he is enlarged on bail upon his furnishing the PR Bond for Rs. 50,000/- along with one surety in the like amount to the satisfaction of the concerned Sessions Court;

(ii) The Applicant must report to the concerned Police Station, Bhuinj Police Station, on the first Monday of each month and mark his presence.

(iii) Under no circumstance must the Applicant interfere with the deceased's family or exert any pressure on them.

(iv) The Applicant must not indulge in criminal activities while on bail.

(v) The Applicant must file an undertaking in this Court within seven days of furnishing the PR Bond that he will attend the Court when the Appeal is taken up for hearing.

**21.** We clarify that the observations in this order are only in the Applicant's bail application context. The observations are only prima facie and, therefore, not intended to affect the hearing of the Appeal and evaluation of the evidence in detail.

**22.** This Application is disposed of in the above terms without any order for cost. All concerned to act on an authenticated copy of this order.

**(Jitendra Jain, J)**

**(M.S. Sonak, J)**

This order is modified/corrected pursuant to the order dated 8 July 2025