

BHALCHANDRA
GOPAL
DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2024.12.03
19:14:39 +0530

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

BAIL APPLICATION NO.4293 OF 2024

Atharva Sanjay Haval

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Prashant P. Raul a/w Mr. Mayur G. Sanap and Mr. Kunal Patil for the Applicant.

Mr. C.D. Mali, APP, for the Respondent—State.

P.S.I. Mr. Vinayak Prakash Sapate, Karveer Police Station,
District—Kolhapur, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 3rd December 2024

P.C.:

1. Heard Mr. Raul, learned Counsel for the Applicant and Mr. Mali, learned APP for the Respondent—State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

1	C.R. No.	38 of 2023
2	Date of registration of F.I.R.	19/01/2023
3	Name of Police Station	Karveer, District—Kolhapur
4	Section/s invoked	302 r/w 34 of the <i>I.P.C., 1860</i>
5	Date of incident	18/01/2023-19/01/2023
6	Date of arrest	20/01/2023
7	Date of filing Charge-sheet	18/04/2023

3. As per the prosecution case, the Applicant/Accused No.2–Atharva Sanjay Haval and the Deceased–Rushikesh Mahadev Suryavanshi were working in a video game parlour which is owned by Tushar Taralekar. Said Tushar Taralekar informed Applicant-Atharva that he should not come to work anymore as according to said Tushar Taralekar, said Atharva was showing about 50 to 100 Rupees less in the daily accounts at the parlour.

4. The Applicant-Atharva Haval was under the impression that it was the deceased Rushikesh who told the owner Tushar Taralekar about the mismatch in accounts. Therefore, the Applicant along with other Accused entered into conspiracy. The said Rushikesh was taken to a distant place by all the Accused. All of them consumed liquor and thereafter all the Accused assaulted said Rushikesh with a knife. There are a total of 4 Accused. Accused No.1 is Ganesh Lingappa Yalgatti, Accused No.2 is Atharva Sanjay Haval i.e. the present Applicant, Accused No.3 is Soham Sanjay Shelke and Accused No.4 is Rishabh Vijay Salokhe.

5. It is the contention of Mr. Raul, learned Counsel for the Applicant that the case is of circumstantial evidence and except extra-judicial confession by the Applicant, there is no other evidence to prove the case of prosecution. The applicant is neither named in the F.I.R. nor any role has been attributed against him in order to show his involvement in the

alleged offence. Nothing incriminating has been recovered from the present Applicant.

6. In any case, he submitted that the Applicant is arrested on 20th January 2023 and although the Charge-sheet is filed on 18th April 2023, till date i.e. after a period of 1 year and 7 months, even the Charge is also not framed. He submitted that as per the prosecution case, 56 witnesses are proposed to be examined by the prosecution. Accordingly, the trial will take considerable time to conclude. He submitted that there are no antecedents against the present Applicant.

7. On the other hand, Mr. Mali, learned APP submitted that although the case is of circumstantial evidence, all the Accused have committed murder of the deceased with pre-planning. He submitted that there is a strong motive as the Applicant had been removed from the service as the deceased had informed the owner that Applicant-Accused No.2 Atharva Haval was not giving proper account of earnings at the said parlour. Mr. Mali, learned APP further submitted that after the commission of the crime, the Applicant and other Co-accused i.e. Accused No.1 Ganesh Lingappa Yalgatti stayed at Yatri Niwas and there is evidence concerning the same in the nature of CCTV footage. He also relied on the statement of witness recorded under Section 164 of Cr.PC. He submitted that the present Applicant has disclosed to the said witness about the crime which the Applicant has committed under

Section 302 of the Indian Penal Code. He also submitted that there is a recovery panchanama, which records that the Applicant has shown the place where the cellphone of the deceased had been thrown by the Applicant/Accused. He therefore submitted that although the case is of circumstantial evidence, there are incriminating circumstances and therefore the Bail Application be rejected. On instructions, he submitted that there are no antecedents.

8. As far as contention raised regarding recovery of cellphone is concerned, Mr. Prashant Raul, learned Counsel appearing for the Applicant submitted that the said recovery panchanama only mentions that the Applicant had shown the place where cellphone was thrown, however, cellphone has not actually been recovered and therefore Section 27 of the Indian Evidence Act will not apply to the said panchanama.

9. Perusal of the record shows that the incident in question has taken place between 18th January 2023 to 19th January 2023. F.I.R. was lodged on 19th January 2023 and the Applicant was arrested on 20th January 2023. It is an admitted position that the investigation has been completed and Charge-sheet has been filed on 18th April 2023. As per the Charge-sheet, there are a total of 56 witnesses proposed to be examined by the prosecution. There is no progress in the trial and even the Charge is also not framed. The trial is likely to take a considerably

long time.

10. Speedy trial is one of the facets of right to life and liberty guaranteed under Article 21 of the Constitution of India. Speedy trial is an essential ingredient of “reasonable, fair and just” procedure guaranteed by Article 21 and it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the Accused¹. Therefore, the Applicant is entitled for bail. If the Applicant’s detention is continues, it will amount to an infringement of his fundamental right under Article 21 of the Constitution of India of speedy trial.

11. The Applicant does not have any criminal antecedents.

12. The Applicant does not appear to be at risk of flight.

13. The Applicant is very young of 21 years.

14. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

15. In view thereof, the following order:-

ORDER

- (a) The Applicant – Atharva Sanjay Haval be released on bail in connection with C.R. No.38 of 2023 registered with the Karveer Police Station, District–Kolhapur on his furnishing

¹ Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98

PR. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

- (b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (c) The Applicant shall report to the Karveer Police Station, District-Kolhapur once in a week i.e. on every Sunday between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.
- (d) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.
- (e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

16. The Bail Application is disposed of accordingly.

17. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

[MADHAV J. JAMDAR, J.]