

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

CRIMINAL BAIL APPLICATION NO. 4214 OF 2023

Maruti Bhiva Khandekar

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Amit S. Patel, Advocate, for the Applicant.

Mr. P.P. Malshe, APP, for Respondent-State.

Mr. Anand P. Yashwante, PSI-Malvan Police Station, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 12th April 2024

P. C.

1. Heard Mr. Patel, learned Counsel for the Applicant and Mr. Malshe, 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.	89 of 2023
2.	Date of registration of F.I.R.	9th April 2023
3.	Name of Police Station	Malvan, District-Sindhudurg.
4.	Section/s invoked	302, 34 of <i>I.P.C., 1860</i> ;
5.	Date of incident	8th April 2023
6.	Date of arrest	9th April 2023
7.	Date of filing Charge-sheet	30th June 2023

3. As per the prosecution case, the deceased was in a relationship outside of marriage with the Applicant's wife. The Applicant is Accused No.3. Accused Nos.1 and 2 are brothers of the wife of the Applicant. As per the prosecution case, on 8th April 2023, the Applicant had gone to Malvan searching for a job and at that time at about 9.30 p.m., the deceased came to the house of the Applicant to meet his wife. When the deceased was in the house of the Applicant with the Applicant's wife, Accused No.1-Ganesh Krushna Gawade and Accused No.2-Anaji *alias* Babri Krushna Gawade came there and they found the Applicant's wife i.e. their sister, with the deceased. Thereafter Accused No.1-Ganesh Krushna Gawade took the Applicant's wife to her parents house at Chauke-Sthalkarwadi and Accused No.2-Anaji *alias* Babri took the deceased with him. The said Accused No.1-Ganesh Krushna Gawade after leaving the wife of the Applicant at her parents house, immediately left the said place. As per the prosecution case, thereafter, a phone call was received by the daughter of the deceased from the cellphone of deceased at 10.36 p.m. and the deceased reassured the daughter that there is nothing to worry about and that he was alright. Thereafter, as the daughter of the deceased was worrying, she called her father at about 10.47 p.m. and at that time Accused No.1- Ganesh Krushna Gawade informed her that the deceased was at Chauke. Therefore, the daughter of the deceased immediately called her uncle,

who resides at Bordve-Sunderwadi, Taluka-Kankavali. The brother of the deceased called on the cellphone of the deceased and at that time one person answered the call and stated that if he wants his brother alive, then he should be taken immediately out of Chauke. In view of this, brother of the deceased reached at the said spot at Chauke and the Accused Nos.1 and 2 informed the brother of the deceased i.e. the Informant that thereafter the deceased should not be seen at Chauke as he was harassing their sister. The brother of the deceased noticed that all the Accused had mercilessly assaulted his brother. Thereafter, the brother of the deceased took the deceased to various hospitals and ultimately the deceased succumbed to the resultant injuries.

4. Mr. Patel, learned Counsel for the Applicant submitted that if the entire prosecution case is taken as it is, then also the same shows that there was no intention to commit the offence in question which is punishable under Section 302 of I.P.C., 1860. The brothers of the Applicant's wife as well as the Applicant himself assaulted the deceased so that he should thereafter not contact the Applicant's wife. He submitted that no specific role is attributed to the Applicant. He also submitted that there are no criminal antecedents. The Applicant is a daily-wager. The Applicant is having two sons, one about 16 years old and working in a hospital and second enrolled in 6th standard. He therefore submitted that the Applicant be released on bail.

5. On the other hand, Mr. Malshe, learned APP vehemently opposed the Bail Application. He submitted that there is a strong motive to commit the offence in question. The Applicant and other Accused have mercilessly assaulted the deceased and therefore the Bail Application be rejected. After taking instructions, he submitted that the Applicant has no criminal antecedents.

6. Perusal of the record shows that the incident in question took place on 8th April 2023, the Applicant was arrested on 9th April 2023 and the Charge-sheet was filed on 30th June 2023. As per the Charge-sheet, there are 36 witnesses proposed to be examined by the prosecution. There is no further progress in the trial and even the Charges are not framed yet. Accordingly, the trial is likely to take a considerably long time.

7. *Prima facie*, there is substance in the contention of the learned Counsel for the Applicant that there was no intention to commit the offence punishable under Section 302 of *I.P.C.*, 1860.

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

9. The Applicant does not have any criminal antecedents.

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

11. In view thereof, the following order:-

ORDER

(a) The Applicant - Maruti Bhiva Khandekar be released on bail in connection with C.R. No.89 of 2023 registered with the Malvan Police Station, Taluka-Malvan, District-Sindhudurg on his furnishing P. R. Bond of Rs.10,000/- with one or two 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 Malvan Police Station, Taluka - Malvan, District - Sindhudurg as and when necessary, 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 prosecution 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.

12. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]