

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

BHALCHANDRA
GOPAL DUSANE

BAIL APPLICATION NO.698 OF 2024

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Sanjay Baban Bhapkar	...Applicant
V/s.	
The State of Maharashtra	...Respondent

Ms. Reshma Mutha, *Amicus Curiae* - Appointed.
 Mr. Mahesh Mundaware h/for Mr. Vikram Shinde for Applicant.
 Mr. Shriram S. Chaudhari, APP for Respondent-State.
 Mr. G.M. Hipparkar, Police Naik, B.No.2329, Saswad Police
 Station present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 22nd February 2024

P.C. :

1. This matter was on Board yesterday. However as none appeared in the morning session, the matter was kept in the afternoon Session.
2. In the afternoon session too, none appeared for the Applicant and therefore the matter is kept today. Today also none appears for the Applicant.
3. Therefore, Ms. Reshma Mutha, learned Advocate is appointed as *Amicus Curiae* to assist the Court. She requested to keep the matter in the afternoon session.

Later on in the afternoon session:-

4. As none appeared yesterday and today for the Applicant, Ms. Reshma Mutha, learned Counsel was appointed as *Amicus*

in the morning and she submitted that she will proceed with the matter in the afternoon session.

5. In the afternoon session, Advocate Mr. Mahesh Mundaware appeared on instructions of Mr. Vikram Shinde learned Advocate on record. He submitted that as Mr. Shinde is from Pune, he was not aware that the matter was on the board and therefore he could not appear in the matter. However, with assistance of learned *Amicus* and learned A.P.P., I have gone through the papers and also heard submissions of learned *Amicus* and learned APP.

6. Learned *Amicus* has submitted that this is a case of circumstantial evidence. The Applicant is arrested on 25th January 2022 and till date there is no further progress in the trial. She submitted that the only evidence against the Applicant is last seen together and recovery of blood-stained shirt, trousers, shoes and motorcycle. She submitted that even if the prosecution case is accepted as it is then also it is clear that the incident has occurred under the influence of alcohol and therefore the offence under Section 302 of the *Indian Penal Code, 1860* is not made out.

7. On the other hand, Mr. Chaudhari, learned A.P.P. strongly opposed the Bail Application. He submitted that there is a

motive as there was a quarrel between the Applicant and the deceased. The Applicant and deceased were last seen together. He pointed out the cell phone conversation between the Applicant and one of the witness. He further pointed out statements of Witness - Subhash Sitaram Harpale (Page 76 of the Application) and Om Kishor Kamathe (Page 139 of the Application) and Forensic Report of weapons (Page 218 of the Application).

8. As far as the cell phone conversation is concerned, learned *Amicus* pointed out the decision of the Hon'ble Supreme Court in *Sudhir Chaudhary V. State (NCT of Delhi)*¹. She relied on paragraph nos.11 and 12 thereof, which read as under:-

"11. By an order of this Court dated 1-7-2016 [Sudhir Chaudhary v. State (NCT of Delhi), 2016 SCC OnLine SC 1707, wherein it was directed: "Arguments heard. Judgment reserved. In the meantime, the investigating officer shall file the transcript of the disputed conversation in a sealed cover. We further direct that the Director, Central Forensic Science Laboratory (CFSL) shall file in a sealed cover proposed passage of a written text, which the petitioners herein shall be required to read out, for purposes of giving their voice samples using words but not the sentences appearing in the disputed conversation in such number as the Director/Scientific Officer may consider necessary for purposes of comparison. Needful be done within

¹ (2016) 8 SCC 307

four weeks.”], the investigating officer was directed to file a transcript of the disputed conversation in a sealed cover. The Director CFSL-CBI, was called upon to file in a sealed cover a proposed passage of a written text which the appellants shall be required to read out for the purpose of giving their voice samples using words, but not the sentences, appearing in the disputed conversation in such number as the Director/Scientific Officer may consider necessary for the purpose of comparison.

12. We are of the view that the aforesaid directions which have been issued by this Court would allay the apprehension of the appellants in regard to the fairness of the process involved in drawing the voice sample. Our directions ensure that the text which the appellants would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text. Similarly, permitting the text to contain words drawn from the disputed conversation would meet the legitimate concern of the investigating authorities for making a fair comparison."

She submitted that the voice sample as reflected on page no.178 of the Application is not in accordance with the directions of the Supreme Court.

9. Perusal of the record shows the incident in question has taken place on the intervening night of 24th January 2022 and 25th January 2022. The F.I.R. has been filed on 25th January 2022 and the Applicant has been arrested on the very day i.e. on 25th February 2022. The Charge-sheet has been filed on 21st April 2022. As per the Charge-sheet, there are about 24

witnesses proposed to be examined by the prosecution. Till date, there is no further progress in the trial and even the Charge is also not framed yet. Therefore, the trial is likely to take a considerably long time.

10. The material on record, particularly the statement of the prosecution witness - Subhash shows that the Applicant, deceased and others were consuming liquor in a garden from 08.30 p.m. till about 11.00 p.m. on 24th January 2022. At that time, some quarrel broke out between the Applicant, deceased and others and the Applicant has started abusing and assaulting the said witness - Subhash. At that time the deceased has also assaulted the Applicant. The deceased thereafter went to his house at about 11.30 p.m. and narrated the incident which had occurred in a garden, to his wife i.e. the informant-Lata, where the deceased had told the Informant that he had also assaulted the Applicant. At that time, the Accused No.1- Kiran Zende came to the house of deceased and told him that the Applicant has called him and thereafter deceased went alongwith the Accused No.1 and it appears that the incident has taken place. As per the prosecution case, the deceased was assaulted by the Accused and ultimately the deceased succumbed to the injuries. The case is of circumstantial evidence.

11. There is some substance in the contentions raised by the learned APP that although the case is of circumstantial evidence, there are circumstances which show the involvement of the Applicant in the crime. However, the prosecution case shows that the deceased as well as the Applicant and others at the relevant time were under the influence of alcohol. In any case, the Charge-sheet is filed and the investigation is completed. Although the Applicant is in custody for more than 2 years, there is no further progress in the trial.

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

13. The Applicant does not have any criminal antecedents.

14. Accordingly, the Applicant can be enlarged on bail by imposing conditions. In view thereof, the following order:-

ORDER

(a) The Applicant-Sanjay Baban Bhapkar be released on bail in connection with C. R. No.22 of 2022 registered with the Saswad Police Station, District-Pune on his furnishing P.R. 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 Saswad Police Station, District-Pune on the first Sunday of every month 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.

15. The Bail Application is disposed of accordingly.

16. It is clarified that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own

merits, uninfluenced by the observations made in this Order.

17. This Court places on record its appreciation for the valuable assistance rendered by Ms. Reshma Mutha, learned *Amicus Curiae*. The High Court Legal Services Authority, Mumbai to pay professional charges to Ms. Reshma Mutha, as per rules and her name be included on the panel.

[MADHAV J. JAMDAR, J.]