

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2052 OF 2023

Sushil Dharma Yadav

.Applicant

Versus

The State of Maharashtra

.Respondent

WITH

INTERIM APPLICATION (ST) NO.4898 OF 2024
IN
BAIL APPLICATION NO.2052 OF 2023

Surekha Sanjay Karle

.Intervenor

IN THE MATTER BETWEEN

Sushil Dharma Yadav

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. R. R. Salvi a/w. Mr. Ausgre Carvalho i/b. Ms. Suvarna Telgote,
Advocate, for the Applicant.

Ms. S. S. Kaushik, APP, for the Respondent – State.

Mr. S. R. Mishra, Advocate, for the Intervenor.

Mr. Vikas Salvi, Head Constable, Panvel Taluka Police Station, Navi
Mumbai, present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 14.03.2024

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1. Heard Mr. Salvi, learned Counsel for the Applicant, Ms. Kaushik,

learned APP for the Respondent – State and Mr. Mishra, learned Counsel for the Intervenor.

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

1	C. R. No.	259 of 2022
2	Date of registration of F.I.R.	19/11/2022
3	Name of Police Station	New Panvel - Raigad
4	Section/s invoked	201 r/w 34 of the I.P.C., 1860; 3 & 25 of the Arms Act, 1959
5	Date of incident	18/11/2022
6	Date of arrest	11/01/2023
7	Date of filing Charge-sheet	30/11/2023

3. This Court by a detailed Order dated 12.03.2024 passed in B.A. No.3653 of 2023 had granted bail to the Accused No.3 – Mr. Rohit Bharat Kanitkar. The present Applicant is Accused No.4. Paragraph Nos. 3 to 9 of the said order are relevant and the same read as under:-

*“3. There are a total of 5 Accused. Accused No.1 is Mosin Hamid Mulani, Accused No.2 is Ankit Rajendra Kamble, Accused No.3 is Rohit Bharat Kanitkar (present Applicant), and **Accused No.4 is Sushil Dharma Yadav**. Accused No.5 - Birju Madhu Vishwakarma is absconding.*

4. The prosecution case is as follows:-

(i) Accused No.1-Mosin Mulani and the deceased Sanjay Karle were acquainted with each other and were residing at

Talegaon Dabhade. Accused No.1-Mosin Mulani and Accused No.2-Ankit Kamble are friends. Accused Nos.1 and 2 had purchased a country-made pistol for Rs.50,000/- on the say of the deceased Sanjay Karle from Accused No.5-Birju Vishwkarma, who is absconding.

(ii) The deceased was in the business of sale of gold bars. The Accused No.1-Mosin Mulani had given Rs.7,00,000/- to the deceased Sanjay Karle to purchase gold bars and the deceased had promised to deliver two gold bars of 10 tolas. However, the deceased had avoided compliance with the same.

(iii) On 17th November 2022 sometime between 03.30 p.m. to 05.30 p.m., Accused No.1-Mosin and Accused No.2-Ankit showed the said pistol to the deceased Sanjay Karle and at that time the deceased made a remark saying 'हे काय डबडे घेवून आला' and abused them. Thereafter, Accused No.1-Mosin Mulani fired at the deceased and the deceased succumbed to the resultant injury.

(iv) The Accused No.1-Mosin Mulani and Accused No.2-Ankit Kamble placed the mortal remains of the deceased in the rear seat of a car and they drove the said towards the outskirts of village-Tara and the same was found near the boundary of Village Tara along the Mumbai-Goa Highway.

(v) Accused No.1-Mosin and Accused No.2-Ankit threw the cell phone of the deceased in the Patalganga river and removed one gold bar weighing 100 grams from the trousers of the deceased. Thereafter they left the mortal remains of the deceased in a car.

(vi) Thereafter, on 17th November 2022 at around 5.30 p.m., the Accused No.1 and Accused No.2 went to a Jewellery Shop namely 'Mayura Jewellers' situated at M.G. Road, Panvel and mortgaged the said gold bar and collected cash worth Rs.4,95,000/-.

(vii) Thereafter, Accused No.1 and Accused No.2 contacted the Accused No.3. The Accused No.2 and Accused No.3 are relatives.

(viii) It is the prosecution case that it was with complete knowledge that the Accused Nos.1 and 2 have murdered the deceased and that they both have mortgaged the gold bar to collect cash worth Rs.4,95,000/- from the said 'Mayura

*Jewellers', the Accused No.3 arranged for both their stay in a hotel named 'Varishtta' at Kopar Khairane-Navi mumbai and they both also kept Rs.4,00,000/- and two firearms with the Accused No.3. As per the prosecution case, Rs.1,00,000/- were recovered from the step father of the Accused No.3 i.e. the Applicant, **and firearms were handed over to the Accused No.4 who discarded the same in a garbage bin at 'Aijee Park' Building – Karanjade.***

5. *It is the submission of Ms. Ansari, learned Counsel for the Applicant i.e. Accused No.3 that the role which has been attributed to the present Applicant is that Accused Nos.1 and 2 have committed the offence in question and approached the Applicant to arrange for their stay and Rs.4,00,000/- and two firearms were handed over by them to the Applicant. She submitted that the offence which is alleged against the present Applicant is punishable under Sections 404, 212, and, 201 r/w 34 of the Indian Penal Code, 1860 ("IPC") as well as under Sections 3 and 25 of the Arms Act, 1959. She submitted that all these offences are bailable. She submitted that there is nothing on record to show that the Applicant is connected with the main offence of murder. She also submitted that there are no antecedents. She therefore submitted that the Applicant is entitled to be released on bail.*

6. *On the other hand, Mr. Gaikwad, learned APP strongly opposed the Bail Application. He pointed out the recovery panchanama at the instance of the Accused No.2 (Page 121). He also pointed out the recovery panchanama at the instance of Accused No.4 (Page 140). He submitted that there is a recovery of Rs.1,00,000/- at the instance of the Applicant. He pointed out the statement of Jyotiranjana Bhaskar Mohanty, who was working as Receptionist at hotel Varishtta (Page 279) and the statement of Bharatkumar Ramji Rammali, who is a shop keeper of mobile shop (Page 297). He pointed out the statement of witness-Dhruvraj Laxman More (Page 310) and the statement of witness-Shashikant Ankush Jagdhan, who had identified the Applicant in Test-Identification Parade. He submitted that the*

Applicant has participated in the crime and therefore, the Bail Application be rejected.

7. A perusal of the record shows that the main offence punishable under Section 302 of the I.P.C., 1860, in which the deceased had been killed, occurred on 17th November 2022 at around between 03.30 p.m. to 05.30 p.m. As far as the role attributed to the present Applicant is concerned, the same is that after Accused No.1 and Accused No.2 committed the offence, they approached to the Applicant to arrange their stay as the Accused No.2 is the cousin brother of the Applicant. The statement of Manager of the Lodge shows that guest room was booked by Rohit Kanitkar on 17th November 2022 at 21.30 p.m.. The other role which has been attributed to the present Applicant is that Rs.4,00,000/- and two fire arms were also handed over to him by the Accused Nos.1 and 2.

8. Therefore, prima facie, it is clear that the offence which is alleged against the present Applicant is mainly punishable under Section 212 of the I.P.C., 1860. The other offence is under Sections 404 and 201 of the I.P.C., 1860. The offences which are alleged against the present Applicant i.e. under Sections 404, 212, 201 r/w 34 of the I.P.C., 1860 as well as Sections 3 and 25 of the Arms Act, 1959 are the bailable offences. Prima facie, there is no material to connect the Applicant with the offence of murder punishable under Section 302 of the IPC. Therefore, the Applicant is entitled to be released on bail.

9. It is an admitted position that investigation has been completed and Charge-sheet has been filed on 30th November 2023. The trial is likely to take a considerably long time.”

(Emphasis supplied)

4. Thus, it is clear that the role of Accused No.4 is that a firearm was handed over to the Accused No.4 by Accused No.3 and Accused

No.4 discarded the same in a garbage bin at 'Aijee Park' Building – Karanjade.

5. Even as per the prosecution case, the present Applicant is involved in offences which are punishable under Sections 201 r/w 34 of the *Indian Penal Code, 1860* and under Sections 3 and 25 of the *Arms Act, 1959*. All these offences are bailable.

6. Mr. Salvi, learned Counsel for the Applicant is right in contending that all these offences are bailable and still the Applicant is behind bars since one year and two months. He further states that the present Applicant does not have any antecedents.

7. Accordingly, for the reasons set out in the Order dated 12.03.2024 passed in B.A. No.3653 of 2023 and for above reasons, the Applicant is enlarged on bail on the following terms & conditions :-

ORDER

- (a) The Applicant - Sushil Dharma Yadav be released on bail in connection with C.R. No.259 of 2022 registered with the New Panvel Police Station, District–Raigad on his furnishing P.R. Bond of Rs.50,000/- with one or two local 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 New Panvel Police Station,

District-Raigad once in every 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.

8. The Bail Application is disposed of accordingly.

9. It is clarified that the 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.

10. In view of disposal of the Bail Application, nothing survives for consideration in the I.A. (St.) No.4898 of 2024 and same stands disposed of accordingly.

[MADHAV J. JAMDAR, J.]