

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2242 OF 2023

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Anil Hemant Sawant

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. P. R. Arjunwadkar, i/b Prabha Badadane, for the
Applicant.

Ms. Supriya Kak, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 25th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in Sessions Case No.85 of 2023 pending on the file of the learned Additional Sessions Judge, Pandharpur, arising out of CR No.314 of 2021 registered with Pandharpur Rural Police Station, District Solapur, for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.
3. In fact, this is the second application for bail. The first application being BA/113/2022 was dismissed as withdrawn with liberty to file a fresh application in the event the trial is

not concluded by June, 2023. Availing the said liberty, the applicant has preferred this application.

4. The indictment against the applicant is that Madhukar Sawant (the deceased) was the paternal uncle of Sagar Sawant, the first informant. The deceased was residing alongwith his wife 'A' and son and daughter. On 11th August, 2021, the deceased left the home at about 8.30 p.m. stating that he would sit for a while near Ambabai temple. The deceased did not return. On 16th August, 2021 the body of the deceased was found floating in the well in the field of Shantabai Sawant.

5. It further transpired that 'A' the wife of the deceased was in a relationship outside marriage with the applicant. As the deceased had known about the said relationship, the applicant was allegedly abused and harassed by the deceased on the said count. The applicant had allegedly stated before 'A' that the day the deceased did not return home, she should reckon that the deceased was finished by the applicant. Thus, the applicant came to be arrested.

6. Mr. Arjunwadkar, the learned Counsel for the applicant, submitted that the applicant has been roped in on the basis of suspicion alone. There is no material to connect the

applicant with the alleged offences. When the FIR was lodged no suspicion of whatsoever nature was expressed. After about five days of the deceased having been found in the well, supplementary statement of the first informant came to be recorded. Likewise, the supplementary statement of 'A' the wife of the deceased was recorded on 21st August, 2021 to implicate the applicant. Had the applicant given the threat as alleged, 'A' would not have missed to state the same when her statement was recorded on 17th August, 2021 submitted Mr. Arjunwadkar.

7. The learned APP, on other other hand, submitted that apart from the statement of 'A', the wife of the deceased, there are statements of witnesses which indicate that on 11th August, 2021 at about 8.30 p.m., the applicant was seen with the deceased near Ambabai temple. Thus, the said factor of last seen alongwith the disclosure statement made by the applicant leading to the recovery of the incriminating articles unmistakably points to the guilt of the accused. Therefore, the applicant may not be released on bail.

8. Evidently, the prosecution is based on circumstantial evidence. It is imperative to note that on the day the FIR was lodged, the first informant did not entertain any suspicion

against any person. Even in the statement of 'A', the wife of the deceased, there was no reference to either the relationship outside marriage with the applicant or the alleged threat given by the applicant. On 21st August, 2021, it seems 'A', the wife of the deceased, disclosed the involvement of the applicant. The statements of three witnesses who had allegedly seen the applicant alongwith the deceased on 11th August, 2021 came to be recorded on 25th August, 2021.

9. In any event, there is a substantial interval of time between the applicant having been seen in the company of the deceased and the dead body of the latter having been found on 16th August, 2021. The PM Report indicates that there was only 1 CLW over right parietio occipital region of the head of the deceased. No other injury was found. It would be contextually relevant to note that the prosecution has attributed assault by means of multiple weapons to the applicant. Firstly, the deceased was allegedly assaulted by means of a wooden stick on head. Secondly, the applicant had allegedly assaulted the deceased by means of a knife. However, the PM Report does not indicate that the deceased had sustained any stab injury. The recovery of the alleged weapons of offence and the incriminate article, pursuant to

the discovery allegedly made by the applicant is, therefore, required to be appreciated through the aforesaid prism.

10. The applicant has been in custody since 19th August, 2021. The *roznama* of the proceedings indicates that the trial has moved at a slow pace. In the backdrop of the nature of the circumstantial evidence on which the prosecution case rests, in my considered view, further detention of the applicant does not seem warranted.

11. In any event the applicant appears to have roots in society. Possibility of fleeing away from justice appears to be remote. The apprehension on the part of the prosecution of tampering with evidence and threatening the witnesses can be taken care of by imposing appropriate conditions.

12. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.314 of 2021 registered with Pandharpur Rural Police Station, District Solapur, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

- (iii) The applicant shall mark his presence at the Pandharpur Rural Police Station on the first Monday of every alternate month between 10.00 a.m. to 1.00 p.m. for the period of two years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. 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 him from disclosing the facts to Court or any police officer.
- (v) The applicant shall not enter the limits of village Pirachi Kuroli till the conclusion of the trial.
- (vi) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vii) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail

and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]