

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

BAIL APPLICATION NO.2885 OF 2023

Rohit *alias* Appa Shivaji Gavali

.Applicant

Versus

The State of Maharashtra

.Respondent

Mr. Aniket Nikam a/w. Mr. Amit Icham, Mr. Satyajeet Mane, & Mr. Dushyant Digamber, Advocates for the Applicant.

Ms. Savita Yadav, APP, for the Respondent – State.

Mr. D. A. Pawar, P. C. B.No.398, Shirur Police Station, Pune, present.

CORAM : MADHAV J. JAMDAR, J.

DATE : 08.03.2024

P. C.

1. Heard Mr. Nikam, learned Counsel for the Applicant and Ms. Yadav, 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.	399 of 2020
2.	Date of registration of F.I.R.	27.06.2020
3.	Name of Police Station	Shirur Police Station, Pune
4.	Sections invoked	302, 201 r/w. 34 of the I.P.C., 1860
5.	Date of incident	Between 25.06.2020 and 27.06.2020
6.	Date of arrest	27.06.2020
7.	Date of filing of Charge-sheet	24.09.2020

3. As per the prosecution case, the Applicant, other accused, and the deceased were consuming liquor at a place in Taluka – Parner, District – Ahmednagar. Thereafter, they went near the S. T. Stand and bought Samosa and thereafter, they traveled in a car. The incident in question occurred at Amdabad which comes under the jurisdiction of Shirur Police Station. At Amdabad, where the incident has taken place, the accused and the deceased were sitting together and consuming liquor. It appears that some altercation took place between them on account of consuming liquor and Accused Nos.1 & 2 assaulted the deceased with kicks and fist blows and Accused No.1 picked up a pipe which was lying nearby and Accused No. 1 strangled the deceased.

4. Mr. Nikam, learned Counsel appearing for the Applicant submitted that the Applicant is incarcerated since three years and eight months. The incident in question had occurred when the accused and the deceased were under the influence of alcohol. The case is of circumstantial evidence.

5. On the other hand, Ms. Yadav, learned APP appearing for the Respondent – State vehemently opposed the Bail Application. She submitted that there is an evidence of last seen together and recovery of the pipe which has been allegedly used in the offence in question.

Apart from that there is an extra-judicial confession.

6. A perusal of the record shows that the incident had taken place between 25.06.2020 and 27.06.2020. F.I.R. was lodged on 27.06.2023 and the Applicant was arrested on 27.06.2020. Charge-sheet has been filed on 24.09.2020. Although the Applicant is incarcerated since three years and eight months, there is no substantial progress in the trial, except framing of charge. As per the Charge-sheet, the prosecution intends to examine 19 witnesses. The trial is likely to take a considerably long time.

7. *Prima facie*, there is substance in the contention of learned Counsel appearing for the Applicant that the incident has occurred on the spur of the moment.

8. The Applicant does not have any criminal antecedents.

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

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

ORDER

(a) The Applicant - Rohit *alias* Appa Shivaji Gavali be released on bail in connection with C.R. No.399 of 2020 registered with the Shirur Police Station, District - Pune on his furnishing P.R. Bond of Rs.25,000/- 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 Shirur 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.

11. The Bail Application is disposed of accordingly.

12. 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.

[MADHAV J. JAMDAR, J.]