

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

CRIMINAL BAIL APPLICATION NO. 3839 OF 2023

Shivaji Pandurang Kolekar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Sachin Thombare i/by Mr. Rohan Hogle, Advocates, for the Applicant.

Ms. Savita M. Yadav, APP, for Respondent- State.

CORAM : MADHAV J. JAMDAR, J.

DATED : 9th May 2024

P. C.

1. Heard Mr. Thombare, 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.	41 of 2022
2.	Date of registration of F.I.R.	16 th February 2022
3.	Name of Police Station	Alandi, District-Pune
4.	Section/s invoked	323, 201, 364, r/w 34 of <i>I.P.C.</i> , 1860;
5.	Date of incident	13 th February 2022
6.	Date of arrest	17 th August 2022
7.	Date of filing Charge-sheet	18 th September 2022
8.	Sections involved in the Charge-sheet	302, 201, 364, r/w 34 of <i>I.P.C.</i> , 1860;

3. The prosecution case as reflected in the F.I.R. is set out in paragraph '2' of the Order dated 17th April 2023 passed by the learned Additional Sessions Court, Khed-Rajgurunagar, District, Pune below Exhibit 8 in Sessions Case No. 182 of 2022. The said paragraph '2' reads as under:

"It is the prosecution case that, one Sunita Shinde lodged report that she alongwith her husband Laxman were working in the poultry farm of one Harshvardhan Gaikwad. On 15/02/2022 at about 4.00 p.m. she lodged missing report of her husband. She, her neighbours and others took search of her husband. One Sunil Pandhare being acquainted with her husband met her and informed that on 13/02/2022 at about 9.30 p.m. one Kondiba Lahu Kale took her husband by his motorcycle and said Kondiba and others were present there. Therefore, she had suspicion that Kondiba Kale, Pintu Kale, applicant Shivaji Kolekar, Sunil Pandhare and others have committed murder of her husband. The reason of suspicion is that there was previous quarrel between her husband and abovesaid persons and therefore on the basis of report lodged, the crime was registered and arrested the applicant and others."

4. It is the contention of Mr. Thombare, learned Counsel for the Applicant that the only role attributed to the Applicant in the crime is that he hit the deceased with a stick on his wrist. He submitted that no motive is attributed to the Applicant. He submitted that there are no other antecedents. He submitted that during the Applicant's incarceration his daughter passed away. The Applicant is the only

earning member of his family. He submitted that the Applicant's family is suffering severe financial difficulties and therefore, the Bail Application be allowed.

5. On the other hand, Ms. Yadav, the learned APP vehemently opposed the Bail Application. She submitted that the Applicant along with others had mercilessly assaulted the deceased. She pointed out the statement of eye-witnesses namely Lokesh Dinesh Jugnate dated 18th February 2022 (Page-76), Kunal Kailas Bhivre (Page-78) dated 18th February 2022 and Kavita Kondiba Kale dated 20th February 2022 (Page-80) and submitted that the Applicant has actively participated in the crime. She therefore submitted that the Bail Application be rejected. However on instructions, she submitted that the Applicant has no antecedents.

6. Perusal of the record shows that the incident in question took place on 13th February 2022, the F.I.R. was registered on 16th February 2022, the Applicant was arrested on 17th August 2022 and the Charge-sheet was filed on 18th September 2022. As per the Charge-sheet, there are about 37 witnesses proposed to be examined by the prosecution. There is no progress in the trial and even the Charge is not yet framed. Accordingly, the trial is likely to take a considerably long time.

7. The eye-witnesses on whose statements learned APP has strongly relied on, show that the Applicant has assaulted the deceased with a

stick on his wrist and said stick was in fact available on the spot of the incident. The post-mortem examination report records that the death is due to head injury. Therefore, *prima facie*, there is substance in the contention of the learned Counsel for the Applicant that the Applicant has no major role in the offence in question.

8. It is the submission of the learned Counsel for the Applicant that the Applicant is the only earning member of his family.

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

10. The Applicant does not have any criminal antecedents.

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

12. In view thereof, the following order:-

ORDER

(a) The Applicant - Shivaji Pandurang Kolekar be released on bail in connection with C.R. No.41 of 2022 registered with the Alandi Police Station, District - Pune on his furnishing P. R. Bond of Rs.10,000/- with one or two local sureties in the like amount.

(b) The Applicant is permitted to furnish cash bail surety in the sum of Rs.10,000/- for a period of two months in lieu of surety.

(c) 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.

(d) The Applicant shall report to the Alandi Police Station, District Pimpri-Chinchwad (Pune) on the first Sunday of every month between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.

(e) 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.

(f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any prosecution witness in any manner.

(g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

13. The Bail Application is disposed of accordingly.

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

[MADHAV J. JAMDAR, J.]