

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

CRIMINAL BAIL APPLICATION NO.4168 OF 2023

Ajay *alias* Bhurya Balu Devkar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Tapan Thatte i/by Mr. Vivek N. Arote, Advocates, for the Applicant.
Mr. Shriram S. Chaudhari, APP, for Respondent-State.
Mr. S.P. Yadav, API, Shirur Police Station, Pune Rural- present.

CORAM : MADHAV J. JAMDAR, J.

DATED : 18th April 2024

P. C.

1. Heard Mr. Thatte, learned Counsel for the Applicant and Mr. Chaudhari, 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.	1012 of 2021
2. Date of registration of F.I.R.	30 th December 2021
3. Name of Police Station	Shirur, District-Pune
4. Section/s invoked	302 of <i>I.P.C., 1860</i> ;
5. Date of incident	25 th December 2021
6. Date of arrest	2 nd January 2022
7. Date of filing of Charge-sheet	March 2022

3. As per the prosecution case, the Applicant has assaulted the deceased with a knife and a sword as the Applicant was under the impression that the deceased had defamed him in the village by stating to the villagers that he had molested her.

4. It is the contention of Mr. Thatte, learned Counsel for the Applicant that there is no direct evidence. The evidence is circumstantial in nature. The alleged dying declaration made to the witnesses by the victim is not believable. He submitted that the Applicant is a very young person aged 22 years. He submitted that the Applicant will abide by all the conditions and therefore the Applicant be enlarged on bail.

5. On the other hand, Mr. Chaudhari, learned APP vehemently opposed the Bail Application. He submitted that although the case is of circumstantial evidence, however, there is a dying declaration where the name of the Applicant has been specifically mentioned. He submitted that there is recovery of a blood-stained knife at the instance of the Applicant. He submitted that the deceased was 42 years old. He submitted that the husband of the deceased had passed away in July 2020 during COVID-19 Pandemic. He submitted that the deceased is survived by two children, daughter Mangal Malhari Dolas (aged 22 years) and son Rahul Malhari Dolas (aged 24 years). He submitted that however, both of them are children with special needs. He submitted

that daughter- Mangal Malhari Dolas is admitted in Tuljai Pratisthan Bahuuddeshiy Sanstha Pangaon Sanchalit Swaadhar Matimand Mulinche Balgruh, Vimantal Road, Aalni, Taluka and District Dharashiv. He submitted that the son- Rahul Malhari Dolas who is also a child with special needs is living with relative of the deceased namely Ramesh Sukhdev Gaikwad. Thus, due to the incident in question, two children with special needs are being deprived of love, affection, and care of their mother. Mr. Chaudhari, learned APP states that there are two antecedents being Crime No. 1101 of 2021 registered with Shirur Police Station under Section 307 of I.P.C. and Crime No. 639 of 2020, registered under Section 354 of I.P.C.. However, as there are two antecedents, stringent conditions are required to be imposed.

6. In view of above factual position, Mr. Thatte, learned Counsel for the Applicant, after taking instructions, stated that although the Applicant is not involved in the crime, the Applicant's father who is present in the court, has voluntarily stated that he is ready to give monetary help for the welfare of the said two children. Accordingly, he has submitted an affidavit of the father of the Applicant. The said Affidavit reads as under:

“मी, बाळू काहणू देवकर, वय: 47, राहणार: मुंजाळवाडी, कवठे, तालुका शिरूर जिल्हा पुणे, शपथपूर्वक घोषित करतो की,
१. मी आज दिनांक १८/०४/२०२४ रोजी मा उच्च न्यायालयात वर नमूद जामीन अर्जाच्या सुनावणी कामी हजर होतो. सदर जामीन अर्ज माझा मुलगा

अजय देवकर याचा आहे.

२. सदर जामीन अर्जाच्या सुनावणी दरम्यान मला श्रीमती. नंदा मल्हारी डोळस यांच्या मृत्यूनंतर त्यांची दोन गतिमंद अपत्ये नामे मंगल मल्हारी डोळस वय २२ आणि राहुल मल्हारी डोळस वय २४ अत्यंत बिकट अवस्थेत असल्याचे समजले.

३. तरी मी सदर गतिमंद अपत्यांना खालील प्रमाणे मदत करू इच्छितो;

अ. आजपासून ७ दिवसात रुपये ३००००/- मी सदर अपत्ये सध्या राहात असलेल्या संस्थेस (तुळजाई प्रतिष्ठान बहुउद्देशीय संस्था पानगाव) देणगी देईन.

आ. आजपासून ७ दिवसात रुपये १००००/- प्रत्येकी, मी दादाभाऊ खंडू डोळस आणि रमेश सुखदेव गायकवाड (अपत्यांचे सांभाळकरते) यांचे नावे डिमांड ड्राफ्टने जमा करीन.

इ. आजपासून ६ महिन्यात रुपये ३००००/- मी सदर अपत्ये सध्या राहात असलेल्या संस्थेस (तुळजाई प्रतिष्ठान बहुउद्देशीय संस्था पानगाव) देणगी देईन.

ई. आजपासून ६ महिन्यात रुपये १००००/- प्रत्येकी, मी दादाभाऊ खंडू डोळस आणि रमेश सुखदेव गायकवाड (अपत्यांचे सांभाळकरते) यांचे नावे डिमांड ड्राफ्टने जमा करीन.

उ. आजपासून १८ महिन्यात रुपये ३००००/- मी सदर अपत्ये सध्या राहात असलेल्या संस्थेस (तुळजाई प्रतिष्ठान बहुउद्देशीय संस्था पानगाव) देणगी देईन.

ऊ. आजपासून १८ महिन्यात रुपये १००००/- प्रत्येकी, मी दादाभाऊ खंडू डोळस आणि रमेश सुखदेव गायकवाड (अपत्यांचे सांभाळकरते) यांचे नावे डिमांड ड्राफ्टने जमा करीन.

४. माझा सदर देणगी देण्याचा विचार हा स्वयंस्फूर्तीने असून त्याचा माझ्या मुलाच्या केसशी काहीही संबंध नाही.

वर नमूद मजकूर खरा आणि बरोबर असल्याने मी आज दिनांक १८/०४/२०२४ रोजी मुंबई येथे सही करीत आहे"

In view of said Affidavit of father of the Applicant, Mr. Dadabhau Khandu Dolas, the informant, who is personally present in the Court states that the son of the deceased is living with his relative, Ramesh Sukhdeo Gaikwad at Kavathe Yemai, Taluka Shirur, District Pune. He states that within a period of 7 days, a joint account will be opened in the name of Dadabhau Khandu Dolas and Ramesh Sukhdeo Gaikwad and the amount which is offered by the father of the Applicant will be deposited in the said account and said amount will be invested in a Fixed Deposit. He further states that the quarterly interest earned from the said Fixed Deposit will be paid to said Ramesh Gaikwad for being utilised for the welfare of the son-Rahul Dolas.

7. Perusal of the records shows that the incident in question took place on 25th December 2021, the Applicant was arrested on 2nd January 2022 and the Charge-sheet was filed in March 2022. Till date, there is no progress in the trial. As per the Charge-sheet, there are about 15 witnesses proposed to be examined by the prosecution. Accordingly, the trial will take considerable time to conclude. The Applicant is incarcerated since more than 2 years and 4 months. The case is of circumstantial evidence.

8. Mr. Thatte, learned Counsel for the Applicant after taking instructions states that as several witnesses are residing in Taluka Shirur, District-Pune, the Applicant will therefore not reside within District - Pune and that the Applicant will reside at Post Javale, Taluka - Parner, District – Ahmednagar.
9. The Applicant does not appear to be at risk of flight.
10. Accordingly, the Applicant can be enlarged on bail by imposing conditions.
11. In view thereof, the following order:-

ORDER

- (a) The Applicant - Ajay *alias* Bhurya Balu Devkar be released on bail in connection with C.R. No.1012 of 2021 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) The Applicant shall not enter the Pune district after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (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 Parner Police Station, District - Ahmednagar once every week, on Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Parner Police Station, District - Ahmednagar to communicate details thereof to the Investigating Officer.

(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 witnesses 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.

12. The Bail Application is disposed of accordingly.

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

Order.

14. It is required to be noted that Mr. Gajanan Savagave, learned Counsel was present in the Court when this matter was argued and after coming to know that one child with special needs-Mangal Malhari Dolas is kept in a special school run by Tuljai Pratisthan Bahuuddeshiy Sanstha Pangaon Sanchalit Swaadhar Matimand Mulinche Balgruh, Vimantal Road, Aalni, Taluka and District Dharashiv, he has given Rs.25,000/- as donation to said Sansthan. The said cheque is handed over to the Investigation Officer. This Court places on record its appreciation of the said gesture. Mr. Chaudhari, learned APP states that the Investigating Officer will handover the said cheque to the said Sansthan.

15. Said Tuljai Pratisthan Bahuuddeshiy Sanstha Pangaon Sanchalit Swaadhar Matimand Mulinche Balgruh, Vimantal Road, Aalni, Taluka and District Dharashiv is requested to utilise said amount to be paid by Balu Kahanu Devkar and paid by Advocate Gajanan Savagave for the welfare of Mangal Malhari Dolas, child with special needs, of the deceased.

[MADHAV J. JAMDAR, J.]