

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

BAIL APPLICATION NO. 1548 OF 2024

Sunil Vasant Jadhav .Applicant

Versus

The State of Maharashtra .Respondent

WITH
INTERIM APPLICATION NO. 1848 OF 2024
IN
BAIL APPLICATION NO. 1548 OF 2024

Vikas Sudam Aher .Intervenor

IN THE MATTER BETWEEN

Sunil Vasant Jadhav .Applicant

Versus

The State of Maharashtra .Respondent

Mr. Kuldeep U. Nikam a/w. Mr. Om N. Latpate & Mr. Samadhan H. Ghumare, Advocates, for the Applicant.

Ms. Veera Shinde, APP, for the Respondent – State.

Mr. Pratik Kalantri (Through VC), Advocate, for the Intervenor.

Mr. Madhav Motiram Sanap, Police Hawaldar, B. No. 923, Yeola Taluka Police Station, Nashik (Rural), present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 31.07.2024

P. C.

1. Heard Mr. Kuldeep Nikam, learned Counsel for the Applicant, Ms. Shinde, learned APP for the Respondent-State and Mr. Kalantri, learned Counsel for the Intervenor.

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.	463 of 2023
2.	Date of registration of F.I.R.	20.08.2023
3.	Name of Police Station	Yeola, Nashik(Rural)
4.	Sections invoked	302, 307, 342, 323, 504, 506 r/w. 34 of the I.P.C., 1860
5.	Date of incident	19.08.2023
6.	Date of arrest	20.08.2023
7.	Date of filing of Charge-sheet	October, 2023

3. The prosecution case is set out in paragraph No. 2 of the Bail Application. The said paragraph No. 2 of the said Bail Application reads as under :-

“2. The allegations contained in the aforesaid FIR are as follows:-

a. The FIR is lodged by Mr. Vikas Sudam Aher residing at the address mentioned in the FIR along with his family member.

b. It alleged by the Complainant that on August 19, 2023, around 1:30 p.m., his cousin Pratik (deceased) and Tushar were setting up in his shop. It is further alleged by the complainant that Pratik got a call from Nikhil Sandeep Jadhav from his village and asked Pratik, where are you? I want to meet you.

c. It is alleged by the Complainant that thereafter, Pratik went to meet Nikhil on his black Platina bike. It is further alleged by After a while, his cousin Tushar came to his shop. The complainant told him that Pratik had not come for a long time. Thereafter, the complainant and Tushar searched for Pratik all over the village, but Pratik was nowhere to be found. It is further alleged by the Complainant that They both tried to call Pratik repeatedly, but he was not picking up. After some time, his phone got switched off.

d. It is alleged by the Complainant that at around 3 p.m., he saw Nikhil and Pratik's bikes parked on one farm and

complainant told his father about it. It is further alleged by the Complainant that his father called Nikhil, and Nikhil told him that Tushar, along with him, went to Yeola. Thereafter, the complainant and Tushar tried to contact Nikhil on his mobile phone, but Nikhil was not picking up the phone.

e. It is further alleged by the complainant that Tushar called on Nikhil's second phone number. It is alleged by the Complainant that Nikhil received the call and told him that they had both come to Yeola. After that the complainant and Tushar, along with one friend, went to search for Pratik in Yeola. But Pratik was nowhere to be found in Yeola. After some time, the complainant got a phone call from his father. He said that Sandeep Jadhav told him that Pratik is sitting near his farm house.

f. It is alleged by the complainant that at around 5.30 pm, the complainant, his friend, and Tushar went to Sandeep Jadhav's farmhouse. They saw that Pratik was lying injured in the farm. It is further alleged by the complainant that when he asked Pratik what happened, Pratik told him that Sandeep Vasant Jadhav, his son Nikhil Jadhav, Sunil Vasant Jadhav, and the present applicant asked him why he was looking at Shraddha, why he was calling Shraddha by mobile phone, and why he was chatting with her.

g. It is alleged by the Complainant that thereafter they assaulted Tushar by kick and fist blow. Tushar further told that Sandeep Vasant Jadhav tied his hands and legs. It is further alleged that thereafter Sandeep Jadhav assaulted him on his legs, nose, and face with a wooden stick. It is further alleged that Nikhil Jadhav assaulted him on the head with an iron rod and also assaulted him with kicks and fist blows on his private part.

h. It is alleged by the Complainant that at that time, Pratik was begging everyone: Don't beat me; I don't want to die; I will never look at your daughter Shraddha or talk to her.

i. It is alleged by the Complainant that thereafter; Pratik was taken to the hospital. In such circumstances CR No. 463 of 2023 came to registered against present applicant and three other Co-accused under provision of Section 307,342,323,504,506 r/w 34 of Indian penal Code, 1860.

j. The applicant state that during the course of medical treatment the injured Pratik Sunil Aher died in the Hospital. The

applicant further states that after the death of the Complainant the provision of Section 302 of Indian Penal Code, 1860 were added by the Respondent Investigation agency.”

4. It is the contention of Mr. Nikam, learned Counsel for the Applicant that the role assigned to the present Applicant is that he has verbally abused the deceased and assaulted the deceased with fist and kick blows. He submitted that even video/audio transcript also records that the Applicant was only present on the spot and he had not assaulted the deceased. He submitted that the alleged incident had taken place on the spur of the moment and in fit of rage without there being any intention to commit murder of the deceased.

5. Mr. Nikam, learned Counsel for the Applicant pointed out the statement of Vikas Sudam Aher (Page No. 51) dated 20.08.2023 on the basis of which FIR has been registered as well as the additional statement of Vikas Sudam Aher (Page No. 58) dated 25.08.2023. He also pointed out the statement of Sudam Shivaji Aher (Page No. 132) dated 27.08.2023. He pointed out the transcript of video/audio recording dated 19.08.2023 particularly, on page No. 97, where it is recorded that the accused No.1– Sandeep Jadhav was saying to the deceased that “हात पुढे कर तुझ्या डोक्यात बसेल”. Thus, he submitted that the prosecution case as reflected from the various statements recorded by the investigating machinery as well as material collected during investigation do not show that the Applicant is involved in the offence punishable under Section 302 of Indian Penal Code, 1860. He

submitted that the Applicant has no antecedents.

6. On the other hand, Ms. Shinde, learned APP for the Respondent – State pointed out the statement of Mayur Vinayak Aher (Page No. 136) dated 27.08.2023 as well as the statement of Rahul *alias* Ravindra Pundlik Khadekar (Page No. 134) dated 27.08.2023. She submitted that the said statements clearly show that when the deceased was being taken to the hospital, he specifically informed that all the accused including the present Applicant had mercilessly assaulted the deceased. She submitted that although the deceased was saying that he would never meet the minor girl, still all of them assaulted the deceased. She pointed out the Post-Mortem Examination Report (“**P. M. Report**”) (Page 116-124) and particularly cause of death, as recorded in the P. M. Report. She submitted that the P. M. Report records cause of death as due to cranium-cerebral damage due to multiple blunt traumas over head. She submitted that the Applicant has been assaulted mercilessly by all the accused including the Applicant. She, therefore, submitted that the Bail Application be rejected.

7. Mr. Kalantri, learned Counsel for the Intervenor submitted that this is a case, where the deceased was called by accused No. 2 – Nikhil Jadav to his farm house and thereafter, all the accused assaulted the deceased mercilessly. He submitted that although it is the contention of the Applicant that accused themselves had informed

about the assault on the deceased, to the family members of the deceased, however, he submitted that in fact, when the family members of the deceased were searching the deceased, the Accused were providing misleading information and thereafter, when the cousin brother of the deceased i. e. Vikas Sudam Aher noticed that a two wheeler belonging to the deceased was found outside the agricultural field of accused No. 2 – Nikhil Jadhav at that time, they came to know about the assault on the deceased. He submitted that even as per the prosecution case, the assault took place between 3.00 p.m. and 4.00 p.m. and the relatives of the deceased were informed about the said assault by the accused at 6.30 p. m. i.e. after about two and half hours. He pointed out the injuries on the body of the deceased and submitted that the injuries are on the vital parts of the body. He submitted that the deceased was telling the accused that henceforth, he would not meet the minor girl and inspite of that he was mercilessly assaulted. He submitted that this is a case of honour killing, as the Applicant belongs to the higher class of Maratha Community and the deceased belongs to the lower class of Maratha Community. He, therefore, submitted that as the assault was due to the honour killing, the Applicant should not be released on bail. He relied on the following Judgments :

- (i) ***Virupakshappa Gouda v. State of Karnataka***, reported in ***(2017) 5 SCC 406*** and particularly on paragraph Nos. 12 & 20;

(ii) ***Sushilaben Yashwantbhai Solanki v. State of Gujarat, (Gujarat) in R/Criminal Appeal No. 514/2020*** and particularly on paragraph No. 21.1;

(iii) ***Subed Ali v. State of Assam***, reported in ***(2020) SCC OnLine SC 794*** and particularly on paragraph No. 13, 14 & 15;

(iv) ***Rajesh Kumar v. State of H. P.***, reported in ***2008 SCC OnLine SC 1508*** and particularly, on paragraph No. 13.

8. The factual position on record shows that the accused No. 1 – Sandeep Jadhav and accused No. 3 – Sunil Jadhav are the sons of accused No. 4 – Vasant Jadhav. Accused No. 2 – Nikhil Jadhav is the son of accused No. 1 – Sandeep Jadhav. As per the prosecution case, the deceased was involved in a romantic relationship with the daughter of accused No. 1- Sandeep Jadhav. At the relevant time, age of daughter of accused No. 1 was 15 years. The statements of the witnesses show that relationship between the deceased and daughter of accused No. 1 was going on for about three years. It appears that all the accused were furious with the deceased due to the said romantic relationship between the deceased and daughter of accused No. 1. The material on record also shows that the main reason for the opposition to said relationship was that the said daughter was a minor, aged 15 years at the relevant time. It is also required to be noted that in the statement recorded under Section 164 of the Code of Criminal Procedure (for short “**Cr.P.C.**”) of Mayur Vinayak Aher, it is stated

that when all the accused were assaulting the deceased, accused No. 1 – Sandeep Jadhav told the deceased that marriages are not performed between the community of the Applicant and that of the deceased. According to the learned Counsel for the Intervenor, although the deceased and the accused belong to the Maratha Community, the accused were belonging to the higher class and the deceased was belonging to the lower class of the Maratha Community and that there cannot be marriage between these two classes of Maratha Community. However, at this stage only, it is required to be noted that Section 161 statement of the same witness is silent about this aspect. There is no other material regarding said allegation.

9. A perusal of the statements of daughter of accused No. 1 shows that the accused have informed father of the deceased and other relatives that the deceased was harassing their daughter and that they should tell the deceased to stop the said activities.

10. Various statements recorded during the investigation show that accused No. 2 had called the deceased to the agricultural field of the accused on the date of the incident and all the accused abused and assaulted the deceased. Insofar as video/audio transcript is concerned, the present Applicant had not seen assaulting the deceased. However, the deceased had informed to Rahul Khadekar and Mayur Aher when he was taken to the hospital that all the accused have mercilessly assaulted the deceased.

11. A perusal of the record shows that the incident in question had taken place on 19.08.2023. FIR was registered on 20.08.2023 and that the Applicant was arrested on 20.08.2023. The charge-sheet was filed in October, 2023. Thus, investigation is complete. As per the charge-sheet, the prosecution is going to examine about 39 witnesses. Till date, there is no further progress in the trial and even charge is also not framed. The trial is unlikely to conclude any time soon and is likely to take a considerably long time.

12. A perusal of the prosecution case shows that as the deceased was involved in a romantic relationship with the daughter of accused No. 1, all the accused were furious with the deceased and as he continued the said relationship, despite of objecting to the same, the incident in question has taken place. It is also required to be noted that daughter of accused No. 1 was minor and 15 years at the time of the incident. A perusal of the record also shows that all the accused were assaulting the deceased. However, video/audio transcript which is particularly on page No. 97 shows that accused No. 1 – Sandeep Jadhav while assaulting the deceased told him to cover his head with hands otherwise his head would be injured.

13. At this stage, by taking into consideration the material on record, it would be very difficult to say that intention of the accused was to kill the deceased. In fact, it appears that the intention was to just teach a lesson to the deceased so that he stops his romantic

relationship with the daughter of accused No. 1. In any case, the Applicant has no antecedents.

14. Learned Counsel for the Intervenor has relied on the Judgment in the case of **Virupakshappa Gouda and another (Supra)**. In the said Judgment, it has been held that the courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the Competent Court. It has been further held that each case has to be decided on the facts of the particular case. Learned Counsel for the Intervenor has very heavily relied on paragraph 20 of the aforesaid Judgment which reads thus :

“20. That apart, as we find from the narration of allegations from the order of the High Court, it is not a case where the trial court could have entertained a bail application by elaborate dissection of facts and appreciation of statements recorded under [Section 161](#) Cr.P.C. The gravity of the crime should have been taken note of by the learned trial Judge. The deceased and his wife (the daughter of the accused-appellant No.1) were staying in peace away from the acrimonious community, but due to some kind of “misconceived class honour”, the vengeance reigned and awe for law went on a holiday. They thought that their perception mattered and as alleged, they put an end to the life spark of the young man. The choice of the daughter was allowed no space. Her identity was crushed and her thinking was crucified by parental dominance which has roots in an unfathomable sense of community honour. Though the lovers became fugitive, the anger founded on anachronistic values prompted the accused persons to annihilate the life of a young man. In such a situation, the factors that have been highlighted by this Court from time to time were required to be adverted to and the accused persons should not have been granted liberty on the grounds that have been thought appropriate by the learned trial Judge. The perversity of approach by the learned Additional Sessions

Judge, who has enlarged the appellants on bail, is totally unacceptable. It is reflective of sanctuary of errors. In such a situation, we are obligated to say that the High Court has performed its legal duty by lancing the order passed by the learned trial Judge.

15. In this case, it is required to be noted that the deceased who was major, aged 21 years was involved in a romantic relationship with the daughter of accused No. 1, who was 15 years at the time of the incident. The said video/audio transcript also shows that the accused No. 1 – Sandeep Jadhav i.e. father of the victim was saying that in fact, case of the rape should have been filed against the deceased. Therefore, this is a case where just to prevent the deceased to have romantic relationship with the daughter of accused No. 1, all the accused had mercilessly assaulted the deceased which had unfortunately resulted into death of the deceased. Therefore, the above Judgment will have no application to the facts of the case.

16. Insofar as the Judgment in the case of **Rajesh Kumar (Supra)** is concerned, same is concerning Section 34 of the IPC regarding common intention. The said judgment is not relevant at the stage of deciding the Bail Application.

17. The Judgment in the case of **Sushilaben Yashwantbhai Solanki (Supra)** is concerned, in that case, the deceased was belonging to the Scheduled Caste and he had married a girl belonging to the higher Caste. Therefore, the deceased in that case was killed. In that case, it has been observed that the case is of honour killing. In the present

case, atleast in video/audio transcript, there is no reference to the caste or that the deceased was belonging to the lower class of Maratha Community and the minor girl was belonging to the higher class of Maratha Community. In fact, in the entire charge-sheet also there is no reference to this aspect. This aspect is mentioned in the statement recorded under Section 164 of the Cr.P.C. of Mayur Vinayak Aher. In the statement recorded under Section 161 of the Cr.P.C. of Mayur Vinayak Aher, also there is no reference to this aspect. Therefore, at the stage of granting bail, in this case, said factor is not of much significance.

18. It is an admitted position that the investigation is completed and the Charge-sheet has been filed in October, 2023. There are about 39 witnesses as per the Charge-sheet to be examined by the prosecution. Thus, considerable time will be required for conclusion of the trial.

19. Mr. Nikam, learned Counsel for the Applicant states that as several witnesses are residing in the same locality as that of the Applicant, the Applicant will therefore not reside within District - Nashik and that the Applicant will reside at the residence of Ms. Archana Jayant Kale, R/o. Dharangaon Road, Shri Krishna Nagar, Kopargaon, Taluka – Kopargaon, District – Ahmednagar.

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

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

conditions.

22. In view thereof, the following order:-

ORDER

(a) The Applicant - **Sunil Vasant Jadhav** be released on bail in connection with C.R. No. 463 of 2023 registered with the Yeola Police Station, District – Nashik(Rural) on his furnishing P.R. Bond of Rs. 25,000/- with one or two solvent sureties in the like amount;

(b) The Applicant shall not enter District-Nashik 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 Kopergaon Police Station, Taluka - Kopergaon, District – Ahmednagar once a week, on every Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Kopergaon Police Station, Taluka - Kopergaon, 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 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.

23. The Bail Application is disposed of accordingly.

24. 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.

25. In view of disposal of the Bail Application, the Interim Application, being I. A. No. 1848 of 2024 does not survive and the same stands disposed of accordingly.

[MADHAV J. JAMDAR, J.]