

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 842 OF 2024

Chhotu@Chotku Aatmaram Patel .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Shriganesh Salba Sawalkar a/w Ms. Vishruti Tari, Advocate for Applicant.
- Ms. Megha S. Bajoria, APP for State.
- PSI – Ganesh Rajnath Bhabad, Manpada Police Station, Dombivali.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 03, 2025

P. C.:

1. Heard Mr. Sawalkar, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 316 of 2020 registered with Manpada Police Station for the offence punishable under Sections 302, 201 r/w 34 of the Indian Penal Code, 1860. (for short, "**IPC**").

3. There are total 3 Accused persons in the present Crime. Applicant is arraigned as Accused No.3 in the present crime. Indictment of Applicant is for committing murder of the deceased victim namely Suri Pal. The case of the prosecution is that on the intervening night of 21.08.2020 and 22.08.2020, deceased victim -

Surij Pal was brutally beaten by the Accused persons and his body was disposed of in the dead of night in order to destroy the evidence.

4. Applicant was arrested on 28.08.2020 and he is in incarceration for the past 4 years 7 months 6 days. Admittedly, charge has not been framed till date. Certainty of the trial even commencing is not on the horizon.

5. On merits, it is seen that Applicant alongwith deceased victim Surij Pal and another co-accused called Mukesh Kumar were working for Accused No.1 namely Sunil Kumar Patel. Accused No.1 was having a Pan Shop and he also used to sell certain articles. The incident incidentally dates back to the Covid-19 pandemic period during which Accused No.1 started selling articles and he used to keep the money earned in the cash drawer in his shop.

5.1. Prosecution case also brings on record the fact said Accused No.1 arranged for Accused No.2, Accused No.3 (Applicant before me) and the deceased victim Surij Pal to stay together in the room which was rented by Accused No.1 in his name in a building called Mayuraj Heights owned by one Bramha P. Mhatre. Admittedly, Accused Nos. 2, 3 and deceased victim used to stay together in this room. This fact is borne out from the statement of the witnesses also from the owner of the building which are placed on record.

5.2. *Prima facie* on the fateful night at about 11:00 pm deceased victim was assaulted and beaten by Accused No.1 by a belt on suspecting him to have stolen money from the cash drawer in his pan shop. The gravity of the assault which occurred was such that the owner of the building Bramha P. Mhatre had to intervene and reason-out with Accused No.1 about the ruckus created by him on beating Surij Pal and he was informed that such behaviour would not be tolerated and he asked them to leave the building.

5.3. Case of prosecution is that since Accused No.2 and Accused No.3 were roommates of Surij Pal and were present and involved in the crime. Because of intervention of landlord, Applicant and Accused No.2 at the behest of Accused No.1 assisted Surij to shift and all of them on that night moved out of said building belonging to Bramha P. Mhatre and shifted to another room which belonged to Accused No.1 which he had taken on rent in a building nearby called Waze Building. What transpired thereafter is the incident in question leading to fatality.

5.4. According to prosecution the deceased victim was once again assaulted by Accused No.1 at about 02:00 pm with an Iron Pipe and Gas Pipe. Case of prosecution is that Applicant alongwith Accused No.2 and Accused No.1 thereafter to help Accused No.1 attempted to dispose of the body of Surij Pal by putting it in a gunny bag and

helped in dumping it into the lake nearby. The statement of watchman of Waze Building was recorded by the prosecution, wherein he has stated the Accused No.1 brought his Activa Scooter and alongwith Accused No.2 – Mukesh Kumar too one gunny bag down on the Activa Scooter for disposal. When Accused Nos. 1 and 2 were about to take the gunny bag for disposal they were questioned by the watchman to which they answered that they were going to throw the garbage which had accumulated in their house. Role of Applicant was to help Accused No.1 in bringing the gunny bag on the ground floor alongwith Accused No.2.

6. Ms. Bajoria, learned APP would persuade the Court to consider that though there is no eye witness to the incident, circumstances in the present case *prima facie* establish the guilt of the accused persons as conspirators. She would submit that present Applicant alongwith Accused No.2 at the behest of Accused No.1 was seen in the company of Surij Pal and therefore his role and participation in committing the crime will have to be inferred by the Court. She would fairly submit that the medical report incidentally is inconclusive considering that the body was found in an extremely decomposed condition. Though it is prosecution case that considering injuries on the body of the victim, it appears that he was assaulted severely by a hard object. Recovery of the wooden sticks and belt has

been made from the building called Mayuraj Heights belonging to Bramha P. Mhatre when the precursor incident of beating the deceased victim occurred and insofar as the incident in question is concerned, an Iron Pipe and Gas Pipe has been recovered. She would therefore persuade the Court to consider the severity of the crime and reject the Bail Application of Applicant.

7. I have heard learned Advocate for Applicant and learned APP for State and perused the record of the case. Initially there was a dichotomy with respect to age of the present Applicant before the Court as to whether he was a juvenile at the time of incident, however that controversy stands rested in view of the documentary evidence placed on record which certifies the date of birth of the Applicant to be as on 01.01.2003.

8. Insofar as the role of Applicant is concerned, prosecution case and the witness statements of neighbours recorded by the prosecution *prima facie* show that Applicant, victim Surij Pal and Accused No.2 were all residing together but due to the theft which had occurred of the cash amount from the cash drawer of the shop belonging to Accused No.1, he visited the room in the building known as Mayuraj Heights belonging to one Bramha P. Mhatre on the night of 20.08.2020 at 11:00 pm and created a ruckus and assaulted the victim which was incidentally witnessed by the said building owner and for

which he was also reprimanded and asked to vacate the room. None of the statements recorded *prima facie* evince or evidence participation of the Applicant in the assault in the precursor incident or the main incident of the crime in question.

9. Case of the prosecution therefore probably rests with circumstantial evidence with respect to aid and assistance provided by Applicant to Accused No.1 after the happening of both the incidents in question.

10. There are 3 accused persons in the present crime whereas *prima facie* from the prosecution case it is seen that Accused Nos.2, 3 and the deceased victim were servants of Accused No.1 and working at his shop and were staying in the room arranged by him.

11. Considering the role which is attributed to the extent of the Applicant of having been spotted in the CCTV footage on the ground floor of the building while bringing the gunny bag there is nothing more than that attributed even though case of the prosecution is based entirely on circumstantial evidence *qua* the Applicant's role. That apart the ignominy of trial not even commencing and charge not having been framed till date entitles the Applicant to be released on bail on the ground of long incarceration also. Complicity of Applicant can be proved by prosecution at the time of trial.

12. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;
- (ii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iv) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 01.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (v) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(viii) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

13. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

14. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]