

H.H. Sawant

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

CRIMINAL BAIL APPLICATION NO.3006 OF 2024

Sumit Vasant Patil

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

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- Mr. Sudeep Pasbola, Senior Advocate a/w Mr. Mrunal Bhide, Mr. Rohin B. Chauhan, Mr. Uttan Singh Rathore i/b Mr. Prashant Malik, Advocates for Applicant.
- Mr. Hitendra J. Dedhia, APP for Respondent No.1 – State.
- Mr. Avinash B. Avhad a/w Mr. Mahesh V. Rawal, Advocates for Respondent No.2.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 12, 2024.

P.C.:

1. This Application is filed under Section 439 of CrPC¹ seeking regular bail in connection with Sessions Case No.80 of 2022 arising out of C.R. No. I-167 of 2021. Applicant is arraigned as Accused No.2 in the present crime. FIR is lodged by Applicant who is nephew of the deceased. Prosecution case is that Accused No.1 and Accused No.2 in collusion with each other hatched a conspiracy and on instructions of Accused No.2 i.e. Applicant, the Accused No.1 assaulted and killed the deceased victim by inflicting several blows with the sickle (*koita*). Applicant was arrested on 25.10.2021 and is incarceration since then

¹ The Code of Criminal Procedure, 1973.

for about 3 years and 5 months.

2. Mr. Awhad, learned advocate for the deceased victim has vehemently opposed grant of bail to Applicant.

3. Mr. Pasbola, learned Senior Advocate appears for Applicant (Accused No.2). He would submit that according to prosecution case, Accused no.1 has allegedly committed the murder of the deceased victim named Bhanudas, the uncle of Applicant. He would submit that Accused No.1 would help the mother of Applicant as an employee in her fish selling business. He would submit that according to prosecution case, there were ensuing quarrels between family of Applicant on one hand and Bhanudas, *inter alia*, pertaining to division of ancestral property as also construction of a chawl by Applicant without consent of Bhanudas. He would submit that there is no direct evidence against the Applicant – Accused No.2 for committing the present crime and prosecution case against him is based on purely circumstantial evidence. He would in his usual fairness at the outset draw my attention to page No.119 and 135 of the Application which is the CDR transcript of the mobile phone of Accused No.1 through which he called the Applicant – Accused No.2 immediately after committing the alleged crime on 23.10.2021 at 20:54 hours and went to meet him thereafter. He would submit that if the mobile phone transcripts appended to the mobile phone panchanama are seen, read and

understood, the case of the prosecution that present Applicant – Accused No.2 has connived in collusion with the Accused No.1 cannot be ascertained and *prima facie* seen, though the prosecution case is to the contrary. He would submit that deceased victim Bhanudas was unmarried and there was an existing dispute between the deceased Bhanudas and the two sons of Vasant Patil who is father of present Applicant. The dispute pertained to construction of a chawl on the joint property / land belonging to the family without seeking permission of the deceased Bhanudas and his mother Sherubai. Vasant Patil has two sons – Applicant Accused Sumit Patil and Amit Patil. He would submit that according to prosecution case, present Applicant – Accused No.2 and his brother Amit Patil hired the services of Accused No.1 who was the employee of their mother to eliminate Bhanudas. He would submit that in so far as Applicant – Accused no.2 is concerned, even according to prosecution case, he was not present at the scene of crime, nor has any witness seen the actual assault on Bhanudas. He would submit that prosecution case is based on circumstantial evidence and fails to conclusively prove nexus of present Applicant – Accused No.2 with the crime in question. He would submit that *prima facie* there is no material on record to suggest complicity of Applicant – Accused No.2 in the crime or he having conspired with Accused No.1 to commit the crime. Hence he would urge the Court to enlarge the Applicant on bail.

4. *PER CONTRA*, learned APP and learned Advocate Mr. Awhad for the Respondent No.2 on behalf of the victim have both drawn my attention to the record of the case and made the following submission for rejection of the bail Application. Their submissions are overlapping and hence for brevity noted together to avoid prolixity.

4.1. That FIR is falsely lodged by the Applicant to distract attention of investigation towards him by implicating that Accused No.1 committed the crime. They would submit that Applicant has intentionally given false information to seek his own exoneration of his act in the crime.

4.2. They would submit that, the most clinching evidence of the Applicant's complicity and proximity to the crime and Accused No.1 in question are the mobile phone conversation transcripts between them on one hand and Applicant and his mother and brother Amit on the other hand immediately after the crime was committed by Accused No.1. They have also referred to and relied upon and read to the Court the mobile phone panchanama conversation at page Nos. 119 and 135 of the Application to contend that because Accused No.1 called and informed the Applicant that his work was done immediately after the crime and went to meet him and was with him thereafter shows the complicity of the Applicant in the crime.

4.3. They would submit that there is no *prima facie* denial that

Accused No.1 spoke to the Applicant and informed him about the crime and met him thereafter at his place which in-turn was relayed by Applicant to his mother and Amit on phone.

4.4. They would submit that deceased Bahnudas was murdered by Accused No.1 at the behest of Applicant and his family members due to the property dispute and enmity with Bahnudas in order to eliminate him because of the objection to them.

4.5. They would submit that Accused No.1 has led to the recovery of not only the body of deceased victim but the weapon used by him.

4.6. They would submit that because of the pending dispute between father of Applicant and deceased Bhanudas who was his brother regarding partition of 19 Are land, Applicant and his family members conspired to eliminate Bhanudas. They would submit that statements recorded by the witnesses i.e. relatives point out towards the grudge held by Applicant and his brother for Bhanudas due to their property dispute.

4.7. They would submit that Accused No.1 was employee of Applicant's mother and reported to her and the Applicant and therefore he had no reason or motive to eliminate the victim – Bhanudas and it was done only for and at the behest of Applicant. They would submit that the crime is gruesome due to several fatal weapon blows inflicted on the body of the victim by Accused No.1 and

therefore Application of Bail of Applicant be rejected in the interest of justice.

5. I have heard the learned Advocates at the bar and with their able assistance, perused the record of the case.

6. *Prima facie* it is seen that there are no eye witnesses to the incident in question. Case of prosecution is based upon circumstantial evidence against Accused No.1 and Accused No.2. The clinching evidence at this *prima facie* stage against Applicant is the CDR transcript of the phone conversation of Applicant and Accused No.1 on one hand and Applicant and his mother and brother Amit Patil thereafter. I have perused it and understood it as it stands. It is in spoken Marathi – Agri language but printed in English transcript. *Prima facie* what is seen is that after committing the crime Accused No.1 made a phone call to Applicant and informed him about not to call him because as he had done his work to which Applicant has repeatedly exclaimed and asked him about which work. To this Accused No.1 told him about the work he was going to do on that day. Accused No.1 then went to meet the Applicant and after meeting him informed him that he committed the murder of Bhanudas. This is followed by the phone call made by Applicant to his mother and brother Amit Patil informing them about what Accused No. 1 has done. When the entire conversation is *prima facie* seen, it cannot be

ascertained with absolute certainty that present Applicant directed Accused No. 1 to commit the crime. This is primarily because of the response given by the Applicant, his mother and his brother when the entire conversation is read. That apart, statement of brother of Applicant also shows that he (Amit) admitted to have received the phone call from Sumit informing him about the act committed by Accused No.1 and that Accused No. 1 came to his house in a panicked state and had informed him about it. There is no variance in the statement of the Applicant, the transcript and statement recorded by Amit Patil. Both the brothers then have approached the Police Station immediately for filing of the complainant about the crime in question. Hence solely on the basis of CDR and the Accused No.1 stating that he has done the work but considering the entire transcript at page Nos. 119 and 135 *prima facie* complicity of Applicant is doubtful. This is my *prima facie* opinion. Had the Applicant been involved, the general tenancy of a criminal is to run away but in the present case, Applicant, when he got knowledge about the crime in question not only he shared it with his mother and brother but he then alongwith his brother immediately approached the Police Station to record the crime. Though the alleged motive has come on record but *prima facie* there is no material at this stage to show direct nexus of Applicant to the crime. Needless to state that Prosecution shall determine the complicity of Applicant in the crime at the stage of trial. That would be

undoubtedly the subject of trial. Considering the aforesaid *prima facie* observations Applicant is directed to be released on bail on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- 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 1.00 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 with 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.

7. 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.

8. Bail Application No.3006 of 2024 is allowed and disposed.

[MILIND N. JADHAV, J.]

H.H. Sawant

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