

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

**INTERIM APPLICATION NO.2539 OF 2024
IN
CRIMINAL APPEAL NO.685 OF 2024**

Jayesh @ Dwarkanath Sopan Gawand ...Applicant

IN THE MATTER BETWEEN

Jayesh @ Dwarkanath Sopan Gawand ...Appellant

Vs.

The State of Maharashtra ...Respondent

Mr. Sachin S. Punde a/w Mr. Suraj B. Jadhav, for the Applicant.
Mr. K. V. Saste, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATED : 10th JULY, 2025

P.C. :-

- 1) This is an Application for bail preferred by the Applicant pending final disposal of his Appeal.
- 2) The Applicant was convicted by the Additional Sessions Judge, Thane *vide* its Judgment and Order dated 2nd February, 2024 in Sessions Case No.365 of 2017 for commission of offence punishable under Sections 302 and 201 read with 34 of I.P.C. He was sentenced to suffer life imprisonment and to pay a fine of Rs.1000/- and in default to suffer R.I. for one month. He was also sentenced to suffer three years' imprisonment for offence punishable under Section 201 read with 34 of the I.P.C. and in default of payment of fine, to suffer R.I. for one month.

3) The Applicant was arrested on 4th May, 2017 and he is in custody since then. More than eight years have passed.

4) The prosecution case is that, deceased-Sachin had gone out in the night at 10:30 p.m. on 29th April, 2017. He did not return. His mother gave a complaint about his missing at Kopri Police Station on 1st May, 2017. The prosecution case is that, the present Applicant and one Darshan along with the deceased Sachin were together at 10:30 p.m. on 29th April, 2017. They had gone to the creek to consume liquor. Since the Applicant was with Sachin, his mother had expressed suspicion against him. The Applicant was arrested on 4th May, 2017. Two other accused were arrested but they were minors and hence were children in conflict with law. It is the prosecution case that on 4th May, 2017 the Applicant showed the spot where they had assaulted the deceased and the spot where the dead body was buried.

5) During trial, the prosecution examined 10 witnesses.

6) Learned Counsel for the Applicant submitted that there is no legally admissible evidence showing complicity of the Applicant in the present crime. The main circumstances against him are last seen together theory, and pointing out of the spot from where the dead body was recovered. He submitted that both these circumstances are not proved beyond reasonable doubt by the prosecution. The time of death is not

established. The prosecution has not established that the dead body was that of the deceased and of no one else. The recovered body was highly decomposed. Therefore, its identification was highly doubtful. The panchas for those recovery panchnamas, had turned hostile.

7) Learned APP opposed these submissions. According to him, the last seen together theory in this case applies against the Applicant in the background of the fact that the dead body was recovered at his instance. Though the recovery panchas have turned hostile, in the cross-examination, they admitted their signature on the panchnama.

8) We have considered these submissions.

9) The evidence of PW6-Dr. Shilpa Sahare mentions that the body was highly decomposed. She could not even ascertain as to whether the injuries were antemortem or postmortem. However, there was a skull fracture noticed by her.

10) PW9- Sunil Dhawale, the photographer to these panchnamas has also stated that since the dead body was decomposed in the water, it was beyond recognizing it. The prosecution has not led any other evidence to connect that the dead body was that of the deceased.

11) PW5- Sani Geddam has deposed that on 29th April, 2017 the Applicant, the deceased and two others had gone near the creek to consume liquor. Therefore, at that point of time, all of them were

together. However, the prosecution has not established the time of death to rule out that the gap between last seen together and the time of death was so small that except the Applicant, no body else could have committed this offence. Therefore, in this case, this circumstance of last seen together is also a weak circumstance. As mentioned earlier, the panchas for recovery of the dead body had turned hostile. But the prosecution examined the photographer-Sunil Dhavale who was examined as PW9 who had videographed the proceedings right from the police station up to the point where the dead body was recovered.

In his cross-examination, he admitted that the police had told him as to why they were to go to the creek. Therefore, there is sufficient doubt created that the police already knew the location of the dead body. Though, he subsequently denied that the police had told him that the dead body was to be excavated. All these circumstances showed that the evidence against the Applicant is weak and doubtful. He is in custody since May, 2017. The Appeal is not likely to be decided in a near future. Therefore, we are inclined to grant bail to the Applicant pending his Appeal. Hence, the following Order.

:: ORDER ::

- a) During pendency and final disposal of Criminal Appeal No.685 of 2024, the Applicant is directed to be released on

bail on executing P. R. bond in the sum of Rs.25,000/- with
one or two sureties in the like amount.

b) The Application is disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)