

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3363 OF 2025

Mahesh Suryakant Kute

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Sunny Waskar i/by Manish Kanojia, for the Applicant.

Ms. Sangeeta D. Shinde, APP for the Respondent - State.

PSI – Suryakant Doke, Borivali Police Station, present.

CORAM: R. M. JOSHI, J.

DATED: 21ST APRIL, 2026.

PC:-

1. The Applicant seeks his release on bail in connection with CR No.1087 of 2020 dated 5th November, 2020 registered with Borivali Police Station, for offence punishable under Section 302, 364, 201 read with Section 34 of the Indian Penal Code, 1860 ('IPC').

2. In short it is the case of the prosecution on the basis of the FIR lodged by the wife of the deceased on 4th November, 2020, that on 3rd November, 2020, the Applicant called the Informant and she found him to be in inebriated condition. Thereafter, the husband of the Informant did not come back. She, therefore, made inquiry about the same. It was revealed that an incident had occurred in which there was quarrel between the deceased, present Applicant and the co-accused. It is claimed that these persons took

the deceased in an auto rickshaw forcibly. According to the prosecution thereafter the husband of the Informant is not found. He therefore is considered to be dead. Offence came to be registered against the Applicant and the co-accused. On conclusion of investigation, charge-sheet has been filed in January, 2025, however, the trial has not commenced.

3. Learned counsel for the Applicant submits that the co-accused has been enlarged on bail by this Court vide order dated 5th February, 2025 passed in Criminal Bail Application No.1509 of 2022. Apart from this, it is his submission that there is no sufficient motive attributable to the Applicant to commit murder of the deceased. It is argued that the body of the deceased is not found and in absence of any other evidence offence of murder cannot be established against the Applicant. He claims that the Applicant is in jail for a period of 5 and ½ years without trial and hence he is entitled for bail. The Applicant has no criminal history behind him.

4. Learned APP opposed the application by contending that finding of dead is not *sine qua non* for the change of charge of murder. She drew attention of the Court to the statements of witnesses to whom the Applicant has confessed about committing the crime in question. Reference is also made to the CCTV footage indicating Applicant and co-accused forcibly taking the deceased in an auto rickshaw. It is her contention that since then the deceased is not found alive. According to her, the Applicant had motive to kill the deceased owing to the previous disputes.

5. No doubt there is substance in the contention of learned APP that finding of dead body is not condition precedent

to change offence of murder. However, at the same time while deciding application for bail, there must be sufficient evidence to connect the Applicant with the crime. *Prima facie* perusal of the record indicates that motive attributed against the Applicant for committing the murder of the deceased is some incident occurred in the college, wherein the Applicant said to have assaulted the deceased. This Court finds substance in the contention of learned counsel for the Applicant that this possibly may not become sufficient reason to commit the murder of the deceased. Apart from the said fact, except for the statements of witnesses indicating confession made by the Applicant, which in itself is a weak piece of evidence, there is no other evidence against accused. From other evidence role attributed to Applicant cannot be distinguished from co-accused. Thus, otherwise role of the Applicant is identical to the co-accused who has been enlarged on bail.

6. The Applicant is in jail for over a period of 5 and ½ years. Though charge has been framed in 2025, till date trial has not commenced. This court finds no reason to believe that the trial is likely to get over in a reasonable time. Hence, following order.

ORDER

- i) The Bail Application stands allowed.
- ii) The Applicant be released on bail in connection with C.R. No.1087 of 2020 registered with Borivali Police Station, Mumbai on furnishing P. R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.
- iii) The Applicant shall remain present before the trial Court on each date unless exempted by the trial Court.

iv) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witness or any person concerned with the case.

v) The Trial Court shall not be influenced by the observations made in this order and shall decide the matter on its own merits and in accordance with law.

vi) The Applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Investigating Officer.

7. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(R. M. JOSHI, J.)