

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 3216 of 2016

District : Aurangabad

Aleem s/o. Jainekhan Pathan,
Age : 28 years,
Occupation : Labourer,
R/o. Laakhegaon,
Taluka : Paithan,
District : Aurangabad.

.. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Bidkin Police Station,
Taluka : Paithan,
District : Aurangabad.

.. Respondent.

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*Mr. V.J. Dixit, Senior Advocate, with
Mr. Yogesh S. Thorat, Advocate, for the applicant.*

*Mr. S.D. Ghayal, Addl. Public Prosecutor, for the
respondent.*

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CORAM : A.M. BADAR, J.

DATE : 3RD OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. I-272/2015 registered with Police Station, Bidkin, District Aurangabad, for offences punishable under Sections 302 and 201 of the Indian Penal Code, by

this application, is seeking bail after filing of the charge-sheet.

2. Heard the learned Senior Advocate appearing for the applicant / accused. The learned Senior Advocate by drawing my attention to statement of Shahnajbi, widow of Shaikh Gani, submitted that evidence so far as motive is concerned, is weak as Shahnajbi has only stated that she had asked the applicant not to visit her house as her daughter is of marriageable age. The learned Senior Counsel further drew my attention to the recovery Panchanama and submitted that according to the prosecution case, a stone is recovered as per voluntary statement disclosure of the present applicant. There is no evidence to show that the said stone was used in assaulting the deceased and therefore, such recovery is not admissible under Section 27 of the Evidence Act.

3. The learned Senior Counsel appearing for the applicant further argued that the case is based on circumstantial evidence and there is no direct evidence to connect the applicant in the crime in question.

4. The learned Addl. Public Prosecutor opposed the application by submitting that the crime in question is serious.

5. Perused the charge-sheet which is made available. The case of the prosecution rests on circumstantial evidence. True it is that there is no direct evidence to connect the applicant in the crime in question. For proving a crime, it is not necessary that the crime must have been committed or must be proved by direct ocular evidence. The offence can be proved by circumstantial evidence also. The principle *fact probandum* may be proved by certain inferences drawn from *factum probans*. According to the prosecution case, Shaikh Gani (since deceased) went missing from 28.10.2015 and ultimately his dead body was found in a well situated at Bidkin Shivar on 21.11.2015. The FIR of the crime in question is lodged by Aniruddha Nandedkar, Police Inspector at Police Station, Bidkin. The prosecution is relying on chain of circumstances for connecting the applicant in the crime in question. The first circumstance is motive with the applicant to eliminate Shaikh Gani. For that purpose, the prosecution is relying on statement of Shahnajbi, widow of the deceased as well as statements of relatives of the deceased including that of her daughter and son. These statements do show that there was quarrel between Shaikh Gani and his wife over frequent visits of the applicant to their house and deceased Shaikh Gani was insisting his wife Shahnajbi that the applicant should not visit their

house in his absence. This evidence constitute motive which may impel the applicant to commit the crime in question.

6. Then there is evidence of last seen together. This theory comes into play when time gap between the point of time when the accused and the deceased were seen alive and when the deceased is found dead, is so small that possibility of any person other than the accused being author of crime becomes impossible. Statement of witness Suresh Chavan shows that on 28.10.2015, the present applicant and deceased Shaikh Gani had been to his hotel and they indulged in booze session at his place. Thereafter they left the hotel together. It is this day, which according to Shahnajbi, her husband went missing and accordingly a missing complaint came to be lodged by her.

7. Charge-sheet shows that the applicant and deceased Shaikh Gani were on the motorcycle of the deceased on 28.10.2015. After arrest of the applicant, on the basis of his confessional statement recorded on 27.11.2015, key of the motorcycle of the deceased was found from the present applicant. Similarly, the applicant had disclosed the place from where he had cut branches of trees to cover up the dead body therein in the well. This evidence prima facie completes the chain of circumstances against

the present applicant, even if the second recovery of stone used in the crime in question is left aside. Post mortem report shows that there were several injuries which are ante mortem in nature on the dead body of Shaikh Gani.

8. The offence alleged against the present applicant is punishable with death sentence or imprisonment for life. In this view of the matter, no case for bail is made out.

9. The application is accordingly rejected.

10. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial of the case.

(A.M. BADAR)
JUDGE

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