

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

BAIL APPLICATION NO.344 OF 2020

Shakil Shamim Shaikh

Applicant

Versus

The State of Maharashtra

Respondent

Mr.N.V.Gaware, advocate for the applicant.

Mr.R.V.Dasalkar, APP for the Respondent.

CORAM : V.K.JADHAV, J.

DATE : 17th December, 2020.

PC :

1 The applicant – Shakil Shamim Shaikh, is seeking bail in connection with Crime No.229/2019, registered with Kannad City Police Station, Tq. Kannad, District Aurangabad, for the offence punishable under Section 302 of the Indian Penal Code.

2 Heard both sides.

3 The learned Counsel for the applicant submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. It has been alleged that the present applicant has borrowed certain amount, as a hand loan, from the deceased and quarrel had taken place between them, however, even there is no evidence in respect of so called quarrel. The learned Counsel submits that the applicant was found in the room in sleeping

condition and there was a blanket on his person. The deceased was found in the kitchen lying on the floor in unconscious condition. Both of them were taken to the hospital. Except this, there is no evidence against the applicant connecting him to the alleged commission of murder of deceased. There are certain injuries on the person of the applicant so also on the person of the deceased, however, in the nail clippings of both of them, nothing was found. The learned Counsel submits that even post incident conduct of the applicant, as alleged and even conduct of the witnesses gathered at the spot, is also suspicious. If at all applicant was the assailant, he would not have stayed in the said flat till he was noticed by the witnesses. The applicant has sustained simple injuries in the form of abrasions and there was no serious injury on his person. The deceased was money lender. It has not been transpired as to who has committed the murder, however, since applicant was found in the same flat, charge sheet came to be submitted against him merely on suspicion. The learned Counsel submits that there is no criminal history. The applicant is available for trial. The applicant is ready to abide by the conditions, that may be imposed by this Court, while enlarging him on bail. The applicant may be released on bail.

4 The learned A.P.P. has strongly resisted the application on the ground the applicant was found in the same flat wherein the deceased was found lying in unconscious condition on the floor of the kitchen. Both of them were having injuries on their persons,

respectively. Thus, an inference can be drawn that there was scuffle between both of them and in consequence thereof, both have sustained injuries. The learned A.P.P. submits that the deceased was last seen in the company of the applicant. The applicant was also found in the same flat even in the morning when the witnesses have arrived and both - the applicant and deceased were taken to the hospital by the police. There there is a strong case against the applicant. The applicant may not be released on bail.

5 On going through the allegations made in the complaint and on perusal of the charge sheet, though I find that the applicant was found in the same flat where deceased was found lying on the floor of the kitchen, however, except this, there is no connecting evidence against the applicant. The applicant has not sustained serious injuries nor there was any reason for him to stay in the flat during the night or till he was noticed by the witnesses in the morning. In the morning, when the witnesses gathered in the flat, they have noticed that the applicant slept there by keeping a blanket on his person. As per the statements of the witnesses, the applicant was also in semi-unconscious condition. Thus, the possibility cannot be ruled out that the assailant may be some third person who had assaulted deceased as well as the applicant. *Prima facie*, it appears that charge sheet has been submitted against the applicant merely on suspicion. There is no criminal history. The deceased was a money lender. Even if the applicant has borrowed certain amount from the deceased,

however, nothing has been revealed during investigation that there used to be quarrels between deceased and applicant on account of said money transaction. Thus motive, in this case, is weak. In view of the same, considering the entire aspects of the case, I am inclined to release the applicant on bail with certain conditions.

6 Hence, the following order:

(i) Application is hereby allowed.

(ii) The applicant - Shakil Shamim Shaikh, in connection with Crime No.229/2019, registered with Kannad City Police Station, Tq. Kannad, District Aurangabad, for the offence punishable under Section 302 of the Indian Penal Code, be released on bail on his furnishing Personal Bond of Rs.20,000/- (Rs.Twenty Thousand) with one solvent surety of the like amount, on the following condition:

(a) The applicant shall not tamper with the prosecution evidence, in any manner.

7 The application is accordingly disposed of.

(V.K.JADHAV)
JUDGE

adb