

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 BAIL APPLICATION NO. 1141 OF 2020

ANIL S/O. TUKARAM KHAIRE
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Jadhav Satej S.
APP for Respondent-State : Mr. S. P. Deshmukh

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CORAM : V. K. JADHAV, J.
DATED : 21ST DECEMBER, 2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No. 903 of 2019 registered with Parner Police Station, Taluka Parner, District Ahmednagar for the offence punishable under Sections 302 and 201 of IPC. His application below Exhibit 4 in Sessions Case No. 70 of 2020 with similar prayer came to be rejected by the Additional Sessions Judge, Ahmednagar vide order dated 16.09.2020.

2. Learned counsel for the applicant submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel

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submits that the dead body of a male aged 50 to 55 years was found within the limits of village Khadakwadi in Sipalkhora area. The dead body was totally decomposed. One Police Constable, namely, Vilas Lonare has lodged the complaint on behalf of the State. Learned counsel submits that during the course of investigation, witness Sheela seems to have identified the dead body as of her husband. Learned counsel submits that witness Sheela is 24 years of age and her elder son Kunal is 5 years of age. Though the age of the deceased is shown as 20 to 25 years in the FIR, however, in the postmortem report the age of the dead body is mentioned as 50 to 55 years. Thus, in all probability, the said dead body could not have been of the husband of witness Sheela. Learned counsel submits that even there is no proper identification and witness Sheela has identified the dead body only on the basis of the photographs of the inner cloths and the pair of *chappal*. Learned counsel submits that even though the husband of witness Sheela was found missing since 16.11.2019, it is surprising that witness Sheela never lodged any missing report. Learned counsel submits that one

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witness Mangesh Shantaram Pawar, who happened to be the nephew of the applicant, has stated that the deceased was lastly seen alive in the company of the applicant. According to him, on 16.11.2019 at about 9.30 a.m. deceased Dhondiram and the applicant consumed liquor together and there was a quarrel between them on account some money transaction. However, thereafter, witness Mangesh left that place. Learned counsel submits that it is not clear as to from which date the deceased was found missing since there was no missing report lodged in the police station. Learned counsel submits that even the motive as alleged is very weak. The applicant and the deceased are also related to each other and the money transaction as alleged is only for the amount of Rs.1,500/-. The applicant has a fixed place of residence. He is easily available for trial. There is no criminal history. The applicant may be released on bail.

3. Learned APP has strongly resisted the application on the ground that in the FIR lodged by one Head Constable on behalf of the State, the age of the dead body was shown as

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20 to 25 years. Even if considering the mistake in the postmortem report about the age of the dead body, however, *prima facie* there is evidence about homicidal death and the probable cause of death is opined as head injury. Learned APP submits that the deceased was lastly seen alive in the company of the applicant and thereafter the dead body of the deceased was found. Learned APP submits that the dead body has been duly identified by witness Sheela. *Prima facie* there is strong case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that on 21.11.2019, the dead body was found. It is not clear from the postmortem report as to the probable time of death. Thus, even on 16.11.2019, if the deceased was seen in the company of the applicant, no inference can be drawn on its basis alone that the applicant is involved in commission of murder. There is no connecting evidence against the applicant. Thus, considering the entire aspect of the case and

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since there is no criminal history, I am inclined to release the applicant on bail. Hence, following order.

O R D E R

I. The application is hereby allowed.

II. The applicant ANIL S/O. TUKARAM KHAIRE be released on bail in connection with Crime No. 903 of 2019 registered with Parner Police Station, Taluka Parner, District Ahmednagar for the offence punishable under Sections 302 and 201 of IPC, on his furnishing P.B. of Rs.20,000/- with one solvent surety of the like amount on the condition that the applicant shall not tamper with the prosecution evidence in any manner.

III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

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