

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

11 BAIL APPLICATION NO.1173 OF 2020

Dnyandeo s/o Namdeo Tupe
Age : 42 years, occ : agri.,
R/o Barhanpur, Tal. Newasa,
District Ahmednagar.

Applicant.

Versus

The State of Maharashtra
Through Officer In Charge
Kannad Rural Police Station,
Aurangabad.

Respondent

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Mr. Akshay Kulkarni, Advocate for the applicant.
Mr. S.P. Deshmukh, A.P.P. for respondent / State.

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CORAM : V.K. JADHAV, J.

DATE : 27th October 2020.

ORDER :-

1. The applicant is seeking regular bail in connection with Crime No. 56 of 2018 registered with Kannad (Rural) Police Station, District Aurangabad for the offences punishable under Sections 302, 120-B, 201 read with Section 34 of the Indian Penal Code. His application (Exh.24) in Sessions Case No. 262 of 2018 with similar prayer came to be rejected by the learned Additional Sessions Judge, Aurangabad vide order dated 08.09.2020.

2. The learned Counsel for the applicant submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. There is no chain of circumstantial evidence. The learned Counsel submits that during the course of investigation a statement of one Mitthu Ramchandra Pawar was recorded. It appears from his statement that on 22.05.2018 at about 6 p.m. this witness has lastly seen the deceased alive in the company of the applicant. The learned Counsel submits that the dead body of the deceased was found on the next day in the morning and there is no further connecting evidence as to what happened after 6 p.m. till the dead body of the deceased found at the spot. The learned Counsel submits that though this witness has identified the applicant during the identification parade, however, this circumstance alone is not of conclusive nature. The learned Counsel submits that as per the prosecution, the applicant was having illicit sexual relations with the wife of the deceased and the same is the motive for the applicant to commit the murder of the deceased. The learned Counsel submits that as per the allegations made in the complaint, the deceased was staying alone and his wife was residing with her parents since three years prior to lodging of the

complaint. The learned Counsel submits that even though there is call detail record indicating that the applicant has made certain phone calls to the wife of deceased at the relevant time, however, as per the said call detail record the location of the caller (applicant) is far away from the spot of the incident. The learned Counsel submits that there is no further connecting evidence against the applicant. Even the co-accused Ranjanabai Rathod (wife of the deceased) came to be released on bail by this Court. The applicant is in jail in connection with the present crime since 01.07.2018. This is the first application after filing of the charge-sheet before this Court. The applicant is having a fixed place of residence. He is available for trial. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that though the prosecution case rests upon circumstantial evidence, there is a chain of circumstantial evidence indicating positive involvement of the applicant in commission of the crime. The learned A.P.P. submits that the deceased was lastly seen alive in the company of the applicant and thereafter the dead body of the deceased was found. The learned A.P.P. submits that prima facie there is evidence about homicidal death of the deceased. Further there is evidence about the motive. The applicant

was having illicit sexual relations with the wife of the deceased and frequent calls between the applicant with the wife of the deceased indicates the same. The learned A.P.P. submits that the said witness Mithu Pawar, who has lastly seen the deceased alive in the company of the applicant, has identified the present applicant in the identification parade conducted during the course of the investigation. Prima facie there is a 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 the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. It further appears that the prosecution mainly rely upon the circumstance of lastly seen the deceased alive in the company of the applicant. However, it appears that the witness Mithu Pawar has seen the deceased proceeding on motorbike of the applicant as a pillion rider in a happy mood on 22.05.2018 at about 6 p.m. There is no further connecting evidence as to what happened during the said night. There is no recovery at the instance of the applicant. Merely on the basis of call detail record, which is also not conclusive in nature, the applicant's further detention in jail is unwarranted and

uncalled for. The applicant is having fixed place of residence, easily available for the trial. Thus, by imposing certain condition, I am inclined to release the applicant on bail. Hence, the following order.

ORDER

1. The application is hereby allowed.
2. The applicant Dnyandeo Namdeo Tupe in connection with Crime No. 56 of 2018 registered with Kannad (Rural) Police Station for the offences punishable under Sections 302, 120-B, 201 read with Section 34 of the Indian Penal Code be released on furnishing personal bond of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount, on the following condition :
 - (i) The applicant shall not tamper with the prosecution evidence in any manner.
5. The application is accordingly disposed of.

(V.K. JADHAV, J.)