

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

11 BAIL APPLICATION NO.11 OF 2021

Kaduba Sakharam Pawar ...Applicant

Versus

The State of Maharashtra ...Respondent.

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Mr. Narendra D. Sonavane, Advocate for the applicant.
Mr. S.B. Narwade, APP for the respondent/State.

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 01st February, 2021**

PER COURT:-

1. The applicant has been arrested in Crime No.289 of 2020 dated 14.10.2020 registered with Shivur Police Station, District Aurangabad for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and therefore, he has filed the present application for regular bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. Sonavane appearing for the applicant and learned APP Mr. Narwade appearing for the respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the investigation is over and charge sheet has been filed. The applicant came to be arrested on 15.10.2020 and he is in magisterial custody since 19.10.2020. The FIR has

been lodged by one Gorakh Revji Sonawane, who is the nephew of deceased Chandrakalabai. He is not an eye witness but he says that he was informed about the deceased being in company with the present applicant and co-accused by one Kushinath Bhima Sonawane and Gorakh Bhaginath Pawar. Statements of these two witnesses would show that they consider themselves as last seen together, but they are not attributing any overt act to the present applicant. Final opinion regarding cause of death has been reserved. Nothing has been recovered at the instance of the present applicant. It would take long time to stand the trial and therefore, the applicant be released on bail.

4. Learned APP strongly opposed the application and submitted that the spot panchnama would show that when the dead body was recovered from the well, it was wrapped in a piece of cloth (saree), which is in local language called 'Bhodh' which is used for picking cotton. Further the P.M. report shows two ante mortem injuries. The body was highly decomposed. As regards final cause of death, the medical officer has reported that the final cause of death cannot be ascertain as there was gross decomposition of the body. However, the circumstances would definitely show that the death of Chandrakalabai was homicidal in nature. The statements of witnesses specially Kushinath and Gorakh would show that Kushinath had seen the present applicant and co-accused

quarreling with deceased Chandrakalabai. Further, the daughter of the deceased had also stated that just prior to the incident, co-accused Subhash had assaulted the witness i.e. Vithabai and when deceased Chandrakalabai had tried to intervene, she was also assaulted. Statements of Kushinath as well as Gorakh would disclose that at about 08.30 pm, when they came near Idgah on Nimgaon Road, they found the present applicant roaming on road and therefore they stopped there. Gorakh asked as to what he is doing there at that time, the applicant told that he is doing nothing and he would go home. Both the witnesses say that they were standing there and at that time, co-accused Subhash came wearing only under-pant and his clothes were on his shoulder and they saw deceased running. Subhash was also asked by Gorakh as to what he is doing, at that time Subhash arrogantly talked by saying that what business they have and they should leave and therefore they say that they went from that place. Therefore, the deceased was in the company of co-accused Subhash and the present applicant had the knowledge about it and he has taken part along with Subhash. Therefore, he deserves no sympathy. Further, under the memorandum and the discovery, Subhash has discovered the remaining piece of the cloth in which the dead body of Chandrakalabai was wrapped. It could not have been the act of one person. Learned APP, therefore, strongly prayed for rejection of the

application.

5. At the outset it can be seen that the charge sheet is filed against two accused persons, which indicates that the investigation is over and therefore, the further physical custody of the applicant is not required for the purpose of investigation. There is no recovery at the hands of the present applicant. No doubt there is indication in the spot panchnama, that the death of Chandrakalabai might be homicidal, however, as regards the P.M. report is concerned, it says that the body was highly decomposed. Three injuries were noted out of that injury no.1 i.e. CLW on right foot with missing III, IV, V toe was post mortem injury. However, injury no.2 i.e. Abrasion 3 x 2 cm on right knee and injury no.3 i.e. Abrasion 2 x 3 cm on left knee are stated to be ante mortem injuries. The medical officer had reserved the cause of death at the time of P.M. report and the viscera was sent for chemical analysis and now the report has been given "final cause of death cannot be ascertain as there is gross decomposition on body".

6. As regards the evidence that has been collected in the matter as against the present applicant is concerned, the statement of Vithabai as referred by learned APP does not show the presence of the present applicant and whatever assault was given, was by co-accused. Another fact is to be noted from the statement of Kushinath and Gorakh that they

say that they had seen the present applicant on road and thereafter, they saw Subhash and Chandrakalabai running and this has happened near Dargah on Nimgaon Road at about 08.30 pm. Perusal of the P.M. report would show that the doctor as on today has not opined the probable time of death. Therefore, whether from the statement of Kushinath and Gorakh it can be considered that they were on the point of last seen together will have to be decided by the learned trial Judge. That incident has taken place on 12.10.2020 and the body was found on 14.10.2020. Even if for the sake of arguments we take the statement of Kushinath and Gorakh as it is, they are not clear as to whether after Gorakh had made enquiry with the present applicant there; whether present applicant went from that place is not clear and after how much time they both had seen Subhash coming out of the shrubs/trees on under-pant and Chandrakalabai running from that place has not been stated by them. Further the discovery is by co-accused, therefore, when the case is based on this circumstantial evidence and trial would take long time to stand, the applicant deserves to be released on bail. Hence, the following order is passed:

ORDER

- I) The application stands allowed.
- II) The applicant viz. Kaduba Sakharam Pawar arrested in connection with Crime No.289 of 2020 dated 14.10.2020

registered with Shivur Police Station, District Aurangabad for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, be released on P.R. of Rs. 30,000/- (thirty thousand) with two solvent sureties of Rs.15,000/- (fifteen thousand) each.

III) The applicant shall not tamper with the evidence of the prosecution in any manner.

IV) The applicant shall not indulge in any criminal activity.

V) The applicant to comply the requirements under Para 12 (1) to (6) of Chapter-I of Criminal Manual before the trial Court (whichever are applicable).

VI) Bail before the trial Court.

(SMT. VIBHA KANKANWADI, J.)