

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

914 BAIL APPLICATION NO.112 OF 2021

AZHAR @ AZZU ZAKIR KHATIK

VERSUS

THE STATE OF MAHARASHTRA

...

Mrs. A.N. Ansari, Advocate for the applicant

Mr. S.B. Narwade, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 02nd MARCH, 2021.

PER COURT :

1 Present applicant has been arrested on 23.07.2020 by Chalisgaon Police Station, Dist. Jalgaon, in connection with Crime No.183/2020, for the offence punishable under Section 302 of the Indian Penal Code. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mrs. A.N. Ansari for the applicant and learned APP Mr. S.B. Narwade for the respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 It is to be noted that the prosecution case is that one Sakarbai

and Sudhakar Suka More are the parents of informant Rajendra. They were found murdered in their hut in the field at village Hatle, Tq. Chalisgaon on 28.06.2020. Rajendra lodged First Information Report against unknown person on the same day. Now, the investigation is over and charge sheet is filed. This indicates that the further physical custody of the applicant is not required for the purpose of investigation, and therefore, we are required to consider the evidence, that is, collected against the present applicant. Before the offence was registered, when the entry was taken in the Station Diary itself and the police went to the spot, panchnama was executed and from the spot itself they had seized quilt and one axe. Thereafter, the clothes on the person of the deceased Sakarbai and Sudhakar were seized. After execution of the Inquest Panchnama the bodies were sent for Post Mortem. The Post Mortem Report shows almost identical injuries in column No.17. Major injury is blunt trauma with fracture to the skull. The opinion in respect of cause of death in respect of both of them is, "Death due to head injury in case of assault". Thus, the perusal of the Inquest Panchnama and the Post Mortem Report would definitely show that both the deaths are homicidal in nature.

4 In the further part of the investigation, it can be seen from the charge sheet that statement of the younger son of the deceased Pandharinath was recorded on 28.06.2020, but then he has stated that there was no enmity

of his parents with anybody and he was not aware as to who would have committed the murder. Similar statement is also recorded of some other persons. However, the learned APP is relying upon the statements of witness Lahyabai and Jyoti, who say that to both of them the present applicant had represented that he loves them and he had insisted that they should keep relations with them. In fact, Jyoti is the daughter of Lahyabai. Lahyabai states that the present applicant has raised objection when Lahyabai intended to arrange marriage of Jyoti. They have given instances when their such relationship was objected by deceased Sudhakar and Sakarbai. Deceased Sudhakar is the brother-in-law of Lahyabai and uncle of Jyoti, whereas Sakarbai is the wife of Sudhakar.

5 Now, on the basis of the statements of Lahyabai and Jyoti it appears that the prosecution intends to say that as the relationship was objected by deceased he has eliminated both of them. It appears that the supplementary statement of the informant and another brother of the informant has been recorded, in which they had thereafter raised suspicion over the present applicant. Under such circumstance, learned APP also points out statements of two persons i.e. Sagar and Ajay, who had supplied petrol to the present applicant and stated that after he took petrol the applicant went towards Nagad i.e. the way, which goes to the field of the deceased.

6 Thus, it can be seen that the case of the prosecution is based on circumstances. Unless strong circumstance is shown, the prosecution will not be able to prove its case. That chain of circumstance is required to be proved at the trial stage, and therefore, with the evidence, that is, collected the applicant need not be asked to remain in jail, as it would take long time to stand his trial. Hence, the application deserves to be allowed. Accordingly, it is allowed. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Azhar @ Azzu Zakir Khatik, who has been arrested, in connection with Crime No.183/2020 registered with Chalisgaon Police Station, Dist. Jalgaon, for the offence punishable under Section 302 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only).

3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 If he commits any breach of above terms of bail, the prosecution

is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 He shall not enter the jurisdiction of village Hatle Shivar till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number. So also he should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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