

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

BAIL APPLICATION NO.160 OF 2021

Sayed Tamkin @ Tamma s/o Syed Matin,
Age 28 years, Occ:
r/o Asefiya Colony, Aurangabad.

... **APPLICANT**

V/s.

The State of Maharashtra
(Through Citychowk Police Station,
Aurangabad)

... **RESPONDENT**

...
Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondents/State : Mr. S.P. Sonpawale
...

CORAM : M.G. SEWLIKAR, J.

RESERVED ON: 6th September, 2021
PRONOUNCED ON: 23rd September, 2021

ORDER:-

This is an application under Section 439 of the Cr.PC. for releasing the applicant on bail.

2. Prosecution case in brief is that accused nos.1 to 8 abducted Sindubai Mhatre at the instance of accused no.1-Imran @ Mehendi Naser Shaikh and carried her to Tuljapur, Sawangi area in farm house and committed murder and thereafter to screen themselves from the said offence

buried her dead body.

3. It appears from the FIR dated 16.03.2012 that accused Imran @ Mehendi Naser Shaikh was arrested in Crime No.19/2012. During interrogation of the said offence it was revealed that a police official Mhatre had given the said Imran @ Mehendi contract to kill the wife of the police officer-Mhatre. The memorandum statement of Imran @ Mehendi was recorded under Section 27 of the Evidence Act. It was revealed that he had abducted the wife of police official Mhatre and she was murdered by his accomplices i.e. applicant, Nazer Ali Naser Ali, Numan Khan Abdul Kayum Khan, Syed Zahir @ Shera Bakhar Qureshi. All of them throttled her by means of a napkin and her dead body was buried. The said Imran @ Mehendi led the police to the spot. After digging the spot a human skeleton, her bangles, saree, blouse and undergarments were found. Accordingly, PI-Sunil Telure lodged an FIR on behalf of the State. Applicant was arrested on 16.03.2012. He also gave memorandum and led the police officer to the place from where skeleton was recovered. After completion of investigation, charge-sheet came to be filed against the accused on the basis of which offence under Section 302, 364, 201, 120-B 143, 147, 148, 149 of the I.P.C. and under Section 3(1)(i), 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) came to be registered.

4. Heard Shri Ghanekar learned counsel for the applicant and Shri Sonpawale learned APP for the State.

5. Shri Ghanekar submitted that the only evidence against the applicant is the memorandum under Section 27 recorded by the police officer and the consequent discovery of the place from where the skeleton was recovered. He submitted that the skeleton was already recovered in consequence of the information furnished by accused no.1-Imran @ Mehendi. He submitted that when applicant led the police officer to the place from where the skeleton was recovered, that place was very much within the knowledge of the police officer and therefore it cannot be said that it was a discovery of the spot where the dead body was buried. He submitted that essential requirement of Section 27 are that discovery should have been made in consequence of the information furnished by the accused, the information given by the accused must distinctly relate to the discovery made, at the time of giving memorandum the accused must be accused of an offence and he must be in the custody of the police officer. He further submitted that if the police officer has knowledge of the information before the discovery is made, it is not discovery in the eye of law. For this purpose he placed reliance on the case of **Vijender and Ors. V/s. State of Delhi; (1997) 6 SCC 171, Madhu V/s. State of Kerala; (2012) 2 Supreme Court Cases 399** and

Navaneethakrishnan V/s. State; (2018) 16 Supreme Court Cases 161. He further submitted that the applicant is in jail since the year 2012 and only four witnesses have been examined and 46 other witnesses are still to be examined. He submitted that having regard to the pace at which the trial is proceeding, the trial is not likely to conclude in the near future. He has, therefore, prayed for releasing the applicant on bail.

6. Learned APP Shri Sonpawale submitted that applicant has committed murder of the wife of the police officer. It is a contract killing. He submitted that the trial could not be proceeded because of the pandemic on account of Covid-19. He submitted that all endeavours will be made to finish the trial within the specified period. He submitted that whether police officer had the knowledge or not will be clear only on recording of entire evidence. At this stage it will be premature to say that the police officer had the prior knowledge of the place where the dead body was buried. He, therefore, prayed for rejection of the application.

7. Charge-sheet has been filed. From the charge-sheet it is seen that during the investigation of Crime No.19/2012 registered under Section 302, 363, 365, 143, 148, 149, 201, 120-B of the I.P.C. accused no.1-Imran @ Mehendi gave the information about the commission of offence of murder of the wife of police officer. It was a contract killing. On recording

memorandum, dead body was exhumed and skeleton was recovered at the instance of accused Imran @ Mehendi. During his interrogation the name of the applicant was revealed. Investigation was done by P.I.-Sunil Telure of Police Station Begumpura, Aurangabad.

8. Applicant was arrested on 16.03.2012. It appears that on the basis of the FIR lodged by PI-Telure Crime No.21/2012 came to be registered in which applicant was arrested on 16.03.2012. From the memorandum statement, it appears that the memorandum was recorded by another officer PSI-Shinde. The accused-Imran @ Mehendi led the police officer to the place and showed them the spot. It further appears from the memorandum of the accused that he had shown willingness to point out the place where spade, hoe and headpan were kept. The memorandum further states that at that place hoe, spade and headpan were not found as it was informed that they were seized during the investigation in Crime No.22/2012 registered with Begumpura Police Station. Having regard to this nature of evidence collected by the prosecution, it will be clear only on recording evidence as to whether the police officer had the knowledge prior to the recovery of skeleton and discovery of the spot. Moreover, all the authorities relied upon by the learned counsel are not at the stage of bail but only after full scale trial. Therefore, at this stage it will not be proper to hold that the Investigating Officer had

prior knowledge of the spot. At least it can be said that the police officer recording memorandum had no knowledge of the seizure of spade, hoe and headpan as at the time of preparing panchanama he was told that these articles are already recovered. This shows that he had no prior knowledge of the place where spade, hoe and headpan were hidden. Therefore, I do not deem it appropriate to release the applicant on bail. The application stands rejected.

9. Learned trial Court is directed to dispose of the trial within a period of six months from today by recording evidence on day to day basis. If trial is not completed within a period of six months, the applicant is at liberty to move the Sessions Court for bail.

10. If it is found that the accused who are released on bail are not co-operating the Court for disposal of the trial the trial Court is at liberty to cancel their bail and commit them to custody.

11. These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.