

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

BAIL APPLICATION NO. 565 OF 2021

Basavraj Baburao Mali,
Age 35 years, Occu. Labour,
R/o. Ramling Mudgad, Tq. Nilanga,
Dist. Latur.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. Ganesh J. Kore, Advocate for the applicant
Mr. S. B. Narwade, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 12.08.2021

DATE OF PRONOUNCING THE ORDER : 23.08.2021

PER COURT : -

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of bail in connection with Crime No. 0251 of 2020, registered with Omerga Police Station, District Osmanabad, for the offences punishable under Sections 302, 504 and 506 of the Indian Penal Code.

2. Informant's father namely, Pandit Mahanure (since deceased) was employed as an agricultural labourer on yearly basis

with Bhagwandas Radhakrishna Toshniwal. The field of the brother of Bhagwandas Radhakrishna Toshniwal is adjoining to the said field. Applicant was also an agricultural labourer with the brother of said Bhagwandas Radhakrishna Toshniwal and also wanted to cultivate the land of said Bhagwandas Radhakrishna Toshniwal and, therefore, always used to ask the deceased to leave the field otherwise there will be bad consequences.

3. On 25.07.2020, Bhagwandas Radhakrishna Toshniwal rang up informant and informed that the applicant had informed him that the informant's father is not seen in the field. The informant accordingly along with his family members went to the field of said Bhagwandas Radhakrishna Toshniwal and after a search, the dead body of his father was found in a well. The informant accordingly lodged the report against the applicant.

4. Mr. Kore, learned Counsel for the applicant, submits that there is no eye witness to the alleged incident. The case of the prosecution is based on circumstantial evidence and the only evidence is in the nature of last seen theory which itself is not sufficient to fasten the criminal liability on the applicant.

5. Mr. Narwade, learned APP, on the other hand, invited my attention to the statements of prosecution witnesses and would submit that these witnesses had seen the applicant and the deceased prior to the incident. There is also recovery panchanama of the wooden log at the instance of the applicant and thus, *prima facie*, there is involvement of the applicant in the alleged offence.

6. From the bare reading of the FIR, it would be seen that even the informant had lodged the complaint against the applicant on the basis of the threats earlier given by the applicant to the deceased. Except that, there is nothing in the FIR. I have also gone through the post-mortem report filed on record, which shows that the cause of death was 'Cardiorespiratory arrest due to diffuse injury to brain (both axonal plus vascular), Shock due to blood loss secondary to head injury'. Thus, it is clear that the head injury was the cause of death of the deceased.

7. As far as the statements of prosecution witnesses relied on by the prosecution are concerned, they are mainly Hanumant Shivaji Mule and Basayya Gundayya Swami. Hanumant Shivaji Mule states in his statement that he runs a hotel. On 24.07.2020, at about 08:00

pm, while he was downing the shutter of his hotel, the applicant and the deceased were standing in front of his hotel and both were under the influence of liquor. He also saw deceased going on the motorcycle of the applicant towards their field.

8. Similar is the evidence of Basayya Gundayya Swami, who also stated that he had seen applicant and deceased at about 07:30 pm near the village and both were under the influence of liquor. After sometime, both of them went away towards the field on motorcycle.

9. It is pertinent to note that both the witnesses had seen the applicant in the company of deceased on 24.07.2020 in between 07:30 pm to 08:00 pm and whereas the dead body was found on the next morning on 25.07.2020. Equally pertinent to note is that according to these witnesses, both were under the influence of liquor. Apparently there was a long gap in between when both of them were found in the company of each other and the time when the dead body was found in a well. It is not the case that immediately after both were seen in the company of each other the dead body of the deceased was discovered. Therefore, at this stage, the prosecution, *prima facie*, cannot derive any benefit from the last seen theory.

10. Lastly, the prosecution has also pressed into service the recovery panchanama of the wooden log allegedly recovered at the instance of the applicant under Section 27 of the Evidence Act. The alleged piece of recovery can be looked at the time of evidence and not at this stage.

11. Having regard to the above discussion, in my considered view, the applicant has made out a case for bail. Hence, following order.

ORDER

- i. The applicant be released on bail in connection with Crime No. 0251 of 2020, registered with Omerga Police Station, District Osmanabad, for the offences punishable under Sections 302, 504 and 506 of the Indian Penal Code, on his furnishing P.R. Bond of Rs. 25,000/- [Rs. Twenty Five Thousand only], with one or two solvent sureties in the like amount.
- ii. The applicant shall not tamper with the prosecution evidence in any manner.

iii. Bail before the trial court.

12. Bail Application No. 565 of 2021 stands allowed in aforesaid terms.

[V. G. BISHT]
JUDGE