

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

BAIL APPLICATION NO. 588 OF 2021

Subhash Ankush Pawar,
Age : 46 years, Occu. Agri.
R/o. Shivur, Tq. Vaijapur,
Dist. Aurangabad.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. Narendra D. Sonavane, Advocate for the applicant
Mr. V. M. Kagne, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 10th August, 2021
DATE OF PRONOUNCING THE ORDER : 18th August, 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. 0289 of 2020, registered with Shivoor Police Station, Tq. Vaijapur, District Aurangabad, for the offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code.

2. On 14.10.2020 at about 08:30 am, one Bala Bhaskar Jadhav informed the informant telephonically that he was told by one Balnath Shingare on phone that a dead body of a woman is found in his well situated in the field. The informant along with Bala Jadhav immediately rushed to the spot. After reaching there, he found that the dead body of a woman was fished out and it was his aunt namely, Chandrakalabai. Out of the people gathered there, Kushinath Bhika Sonavane and Gorakh Bhaginatha Sonavane informed that on 12.10.2020 at about 08:30 pm, the present applicant and another namely Kaduba Sakharam Pawar were quarreling with the deceased Chandrakalabai and since both these persons, namely, present applicant and Kaduba were of quarrelsome nature, they did not tell anybody about the incident. Thus, on the basis of suspicion, the informant filed a complaint against the present applicant.

3. Mr. Sonavane, learned Counsel for the applicant, at the outset, submitted that the present case is based on circumstantial evidence and moreover the complaint is lodged on the basis of suspicion. So also, Kaduba Sakharam Pawar has already been admitted on bail by this Court (Coram : Smt. Vibha Kankanwadi, J.) on 01st February, 2021.

4. The learned Counsel further submits that the post-mortem report does not show the cause of death inasmuch as the cause of death could not be ascertained as the dead body was highly decomposed.

5. Mr. Kagne, learned APP for the State, on the other hand, invited my attention to the recovery panchanama effected under Section 27 of the Evidence Act and submitted that at the instance of present applicant, a part of saree was recovered, the remaining part of which was used in wrapping the body of the deceased. He then invited my attention to the statement of witnesses, namely, Kushinath Bhika Sonavane and Gorakh Bhaginatha Pawar on the point that they had seen the present applicant in the company of the deceased before the incident. There being overwhelming evidence, the present application deserves to be rejected, argued learned APP.

6. First of all, it may be noted that it was on the basis of information of Kushinath Bhika Sonavane and Gorakh Bhaginatha Pawar that the FIR in question came to be lodged by the informant. Although the case is based on circumstantial evidence, no motive is attributed in the very FIR by the informant. This is one aspect.

7. The crucial aspect of the present case is the statements of Kushinath Bhika Sonavane and Gorakh Bhaginatha Pawar, which are also relied on by the learned APP. For all purposes, their respective statements assume significance in the light of the allegations against the present applicant.

8. I have carefully gone through the statements of Kushinath Bhika Sonavane and Gorakh Bhaginatha Pawar. The statement of Kushinath shows that on 12.10.2020 at about 08:15 pm, while he was proceeding towards house of his father-in-law he found that a quarrel was going on amongst the deceased, present applicant and Kaduba Sakharam Pawar and they were abusing each other. As the present applicant is of quarrelsome nature, he did not intervene. He returned to the village and informed this fact to Gorakh Bhaginatha Pawar, his cousin and maternal uncle. At about 08:00 to 08:15 pm, he along with his cousin namely, Indar Sonavane went towards the place of quarrel and near Eidgah, they found Kaduba Sakharam Pawar loitering. They also saw the present applicant coming out of the shrubs wearing underpant and further saw the deceased running away.

9. Thus, from the above statement, it is clear that Kushinath Sonavane had seen the present applicant and Kaduba Sakharam Pawar quarreling with the deceased on 12.10.2020 at 07:15 pm and, thereafter, at 08:00 to 08:15 pm, he and others saw Kaduba Pawar loitering and also the present applicant coming out of the shrubs followed by running away of Chandrakalabai. Thus, as far as the first incident of 07:00 to 07:15 pm is concerned, except the applicant and other accused quarreling with deceased and that they were abusing each other, nothing concrete was seen by this witness. The relevant second part of the incident is of about 08:00 to 08:15 pm, wherein this witness saw the deceased fleeing from the spot. There was no overt act on the part of the present applicant. In my considered opinion, this so-called last seen theory that too of 12.10.2020 does not very positively and *prima facie* comes to the rescue of the prosecution.

10. Gorakh Bhaginatha Pawar on his part states that he was told by Kushinath Sonavane about the quarrel which was going on between the deceased and the present applicant and Kaduba Sakharam Pawar. It appears that he also accompanied Kushinath Sonawane to the spot at about 08:15 pm and repeats the same facts i.e. running away

of the deceased from the spot, as stated by Kushinath. This statement also ends up with the same fate as that of Kushinath Sonavane.

11. I have also gone through the remaining statements on the record. Except above noted two statements, all the above said statements are in the nature of hearsay and *prima facie* do not in any manner point out the complicity of the applicant in the present crime.

12. Coming to the findings of the postmortem report, admittedly, the opinion was reserved and viscera was sent for chemical analysis but since it appears from the record that the dead body was highly decomposed, cause of death could not be ascertained. Coming to the last aspect of the prosecution i.e. 'discovery panchanama', that itself cannot be sufficient to deny the bail and that can be looked at the time of trial.

13. For all the aforesaid reasons, I am inclined to release the accused / applicant on bail. Hence, the following order.

ORDER

- i. The applicant be released on regular bail in connection with Crime No. 0289 of 2020, registered with Shivoor

Police Station, District Aurangabad Rural, for the offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code, on his furnishing P.R. Bond of Rs. 30,000/- [Rs. Thirty Thousand only], with two solvent sureties of Rs. 15,000/-, each.

- ii. The applicant shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iii. The applicant shall not tamper with the prosecution evidence in any manner.
- iv. Bail before the trial court.

14. Bail Application No. 588 of 2021 stands disposed of in aforesaid terms.

[V. G. BISHT]
JUDGE