

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

941 BAIL APPLICATION NO.702 OF 2021

**ANUSAYABAI W/O SANTOSH GONDE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. Ajinkya Reddy, Advocate for the applicant
Shri. S. D. Ghayal, APP for the respondent/State

CORAM : M. G. SEWLIKAR, J.

DATED : 7th September, 2021

PER COURT :-

1. Heard.
2. It is the prosecution case that the informant is P.S.I. On 6th January, 2021, one Hanmant Pundlikrao Jadhav lodged the missing report in the police station alleging therein that the deceased Jagdish Hanmantrao Jadhav, the son of the informant, went missing. Accordingly missing case No. 1 of 2021 was registered.
3. It is further alleged that during the investigation of this missing complaint, a human skull was found in the field of one Manik Namdeo Biradar at village Kudali on 25th

January, 2021 at 4.00 p.m. On taking search, pant, shirt, sweater, pair of chappal and 3-4 pieces of bones were found. On the basis of the pair of chappal and clothes, the said Hanmant Pundlikrao Jadhav identified the dead body to be of his son. Accordingly, AD was registered under Section 174 of the Code of Criminal Procedure.

4. Investigation was taken up. After completion of investigation, it was revealed that the applicant had illicit relations with accused No. 1 and the deceased was aware of it. To get rid of the deceased, the applicant and accused No. 1 murdered the deceased.

5. Accordingly offence was registered under Section 302 of the Indian Penal Code. Charge-sheet has been filed under Sections 302, 201 read with Section 34 of the Indian Penal Code.

6. On perusal of the papers, it is seen that the only evidence against the applicant in the statements under Section 161 of the Code of the Criminal Procedure Mashnaji

Gangaram Pitalwad and Padmakar Vyankatrao Jadhav. They have stated that on 1st January, 2021 at 11.00 p.m. to 11.30 p.m. they saw the applicant going towards Hanuman Temple. Accused was seen following her. On the basis of these two statements the applicant has been arrayed as an accused of having committed murder of the deceased. There is no evidence to show that the death was homicidal. So far as PM report is concerned, it appears that Medical Officer could not give any opinion about cause of death. The opinion is extracted below for facility of reference.

"Exact cause of death can not be determined but on the basis of the results of DNA analysis Hanumant Pundlikrao Jadhav and Kamalbai Hanumant Jadhav are concluded to be the biological parents of unknown (Femur bone of Jagdish Hanumant Jadhav)."

. On the basis of this opinion it cannot be said that the death of the deceased was homicidal one.

7. Even otherwise simply on the basis of vague statements of two witnesses that the deceased was seen following the applicant, it cannot be said that the applicant was responsible for the death of the deceased. Last seen

theory, as it is, is a weak type evidence. In the case at hand as indicated above there is no material to show that the death was homicidal. In this view of the matter, I am inclined to release the applicant on bail. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount in connection with CR No. 37 of 2021 under Section 302, 201 read with Section 34 of the Indian Penal Code registered with Markhel Police Station, Tq. Degloor, Dist. Nanded.
3. Application is disposed of.
4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp