

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

905 BAIL APPLICATION NO.772 OF 2021

**DADA SHAHADEO DHANWADE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. S. J. Salunke, Advocate for the applicant
Shri. S. D. Ghayal, APP for the respondent/State.

CORAM : M. G. SEWLIKAR, J.

DATED : 20th August, 2021

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. It is the prosecution case that deceased Maruti Pawar was the brother of the informant. On 17th September, 2020 at 9.00 a.m, he had seen the applicant and the deceased Maruti at the tea stall near bus stand. He also saw that the deceased Maruti had left that place alongwith the applicant on motorcycle. Since then the whereabouts of the deceased were not known. On 19th September, 2020 at

11.00 a.m. son of the informant by the name of Abhishek texted a message on the Whats App of the informant stating therein that a dead body of a male person was found. The said Abhishek had also forwarded photo of the dead body. On seeing the photo, the informant realised that it was the image of his brother deceased Maruti. Thereafter he lodged the report on the basis of which investigation was taken up.

3. On seeing the condition of the dead body, offence under Section 302 of the IPC came to be registered.

4. Heard Shri. Salunke, learned counsel for the applicant and Shri. Ghayal, learned APP for the respondent/State.

5. Learned counsel Shri. Salunke submits that the post-mortem report shows that the dead body was in a decomposed state. He submits that within a period of 30 hours body decomposition does not start. He further submits that the only evidence against the applicant is of last seen theory. According to him, last seen theory is a weak type of

evidence. He further submits that there is evidence in the form of extra judicial confession. However, it cannot be believed as the witness Uddhav had received a telephonic call from the applicant. The police did not take pains to collect CDR details of the cellphone of the said witness. He submits that the only evidence against the applicant is of last seen.

6. Learned APP Shri. Ghayal submits that there are two more witnesses who had seen the deceased and the applicant together before the death of the deceased. Their statements under Section 164 of the Code of Criminal Procedure have been recorded. They are consistent with the statements of Uddhav. He submits that last seen theory though may be weak type of evidence, but the evidence collected by the prosecution does not show that the deceased was seen with some other person after the applicant and the deceased parted the company. He, therefore, submits that in this case there is cogent evidence against the applicant. Therefore, applicant may not be

released on bail.

7. The only evidence against the applicant is of last seen theory. The applicant was seen by the witness Uddhav. He had received a call from the applicant telling him that applicant had a quarrel with a person and again the applicant called him at 2.45 p.m. informing him that applicant had killed that man by throwing a stone on his head. From the statement of this witness it appears that on 17th September, 2020 at 10.00 a.m. this message was given and another message was given about the murder of the deceased at 2.45 p.m. CDR details are not collected. Therefore, theory of extra judicial confession cannot be believed. In this view of the matter only on the basis of last seen theory that too dead body detected after a period of 30 hours, I am inclined to release the applicant on bail.

8. In view of this, application is allowed. Applicant be released on PR bond of Rs. 15,000 (Rupees Fifteen thousand) with one solvent surety in the like amount and on

condition that he shall attend all the dates which will be fixed during trial.

9. Observations in this application are made only for the disposal of this application. Trial Court need not get influenced by these observations and can come to its independent conclusion.

[M. G. SEWLIKAR, J.]

ssp