

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1111 OF 2021

Raju S/o Santidin Gutam @ Sonya Bihari

Applicant

Versus

The State of Maharashtra

Respondent

Mr. M.B. Sandanshiv, Advocate for the applicant.

Mr. S.D. Ghayal, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 2nd December, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure.

2. Case of the prosecution in short is that deceased was the son of the informant. On 9th January, 2017, the deceased had gone to pick up rag and other waste material and came back at 5.00 pm and, again left home at 8.00 pm. Since then he did not return. On the next day, the dead body of the deceased was found in the bushes of railway godown. Informant identified the dead body of his son. He had an injury on his forehead and one big stone was lying beside him

which was stained with blood. Therefore, he lodged report against unknown person. On the basis of said report, offence under Section 302 of the Indian Penal Code came to be registered.

3. During investigation, it was revealed that applicant along with three more persons committed murder of the deceased.

4. Heard Shri Sandanshiv, learned counsel for the applicant and Shri Ghayal, learned APP for the State.

5. Learned counsel Shri Sandanshiv submits that there is no evidence against the applicant to connect the applicant with the offence. He submits that the only evidence is the confessional statement under Section 27 of the Indian Evidence Act which is inadmissible in evidence.

6. Learned APP submits that the applicant had committed another offence under Section 302 of the Indian Penal Code and he is behind bars in that offence too. Learned APP further submits that the applicant is resident of Bihar and he will not be available for trial.

7. On perusal of the charge-sheet, it appears that supplementary statement of the informant was recorded on 1st July, 2017 i.e. almost after six months of the incident. In this supplementary statement too, name of the applicant does not figure. Accused Sonu Waghmare was arrested and during his interrogation, name of the applicant was revealed. This statement is not admissible against the applicant. Except this, there is no evidence connecting the applicant with the offence. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.25,000/- (Rs. Twenty Five Thousand) with one solvent surety in the like amount in connection with Crime No. 04/2017 registered with Railway Aurangabad Police Station, Dist. Aurangabad, for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code.
- iii) Application stands disposed of.
- iv) 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)
Judge

dyb