

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

BAIL APPLICATION NO.1301 OF 2021

- 1) Shaikh Shajeb S/o Shaikh Khalil,
- 2) Shaikh Khalil S/o Shaikh Abdul Razzak

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Shri Amol Gandhi Advocate h/f. Shri Pratap P.
Mandlik Advocate for Applicants.
Shri S.W. Munde, A.P.P. for Respondent-State.
...

CORAM: M.G. SEWLIKAR, J.

DATE : 1st DECEMBER, 2021

ORDER :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in connection with Crime No. 148 of 2021 registered with Police Station at Karmad, Taluka and District-Aurangabad, for the offences punishable under Sections 302, 201, 120(b) read with Section 34 of the Indian Penal Code.

2. Prosecution case, in short, is that deceased was the brother of the informant. On 20th April 2021 at about 12.00 noon, the informant got a message from police station that a dead body of a youth of 20-22 years old was found. The message was also to the effect that throat of the said youth was slit and his body was partially burnt. When the informant went to the spot, he found that the dead body was of his brother by the name of Shaikh Aamir. Accordingly, First Information Report was lodged and offence was registered under the aforesaid sections.

3. Heard learned counsel Shri Gandhi for the applicants and Shri Munde, learned APP for the State.

4. Shri Gandhi, learned counsel for the applicants submits that there is no evidence against the applicants. No recovery is effected from the applicants either. The alleged last seen theory cannot be believed as the statement to that effect was recorded after two months of the incident.

5. Learned APP for the State submits that there is evidence against the applicants indicating that they are the authors of the crime. Learned APP further submits that tower location report

shows that applicant No.1 was near the spot where the dead body was found.

6. Charge-sheet is filed. On perusal of the charge-sheet, it is seen that on 19th April 2021 the deceased Shaikh Aamir was seen sitting in the auto rickshaw along with Shaikh Kamil Shaikh Jamil and Shaikh Chand Shaikh Gani. The time was at 4.30 p.m. On 20th April 2021 at about 12.00 noon the informant got the message about the death of the deceased. However, the applicants are not the persons who were last seen with the deceased.

7. The only evidence against applicant No.1 is the statement of one Murlidhar Dnyaneshwar Sarode, who is working on the petrol pump. He states in his statement that on 20th April 2021 at about 4.00 to 5.00 a.m. two persons of Muslim community had been to his petrol pump. Their Ape rickshaw was not functioning. His statement further shows that Shaikh Kamil Shaikh Jamil and Shaikh Shajeb Shaikh Khalil were those two persons. However, his statement is also not of any assistance to the prosecution, as there is nothing in the statement to indicate that deceased Aamir was also with them at that time. The only

evidence is the tower location report. On the basis of tower location report it cannot be said that applicant No.1 was the author of the crime. Moreover how long applicant No.1 was there near the spot of incident can also not be determined on the basis of tower location report. There is no evidence against applicant No.2.

8. Applicants have no criminal antecedents. They will be available for trial. In this view of the matter, I am inclined to release the applicants on bail. Hence the following order is passed:

ORDER

(i) Bail Application is allowed.

(ii) Each of the applicants be released on bail on their furnishing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand) each with one solvent surety in the like amount, in connection with Crime No. 148 of 2021 registered with Police Station at Karmad, Taluka and District-Aurangabad, for the offences punishable under Sections 302, 201, 120(b) read with Section 34 of the Indian Penal Code.

(iii) Bail Application is 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, J.]

asb/DEC21