

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1333 OF 2021

DEEPKISHOR PHILANG SAAY)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ganesh Gole i/b. Mr.Ateet Shirodkar, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 26th OCTOBER 2021
PRONOUNCED ON : 15th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.195 OF 2019 registered with Police Station Kurundwad, Kolhapur, for offences punishable under Section 302, 201 read with 34 of the Indian Penal Code (IPC).

2 The informant who at the relevant time was Police Patil of Shivnakwadi, Taluka Shirol, District Kolhapur lodged a report on 23rd September 2019 that on said date, at about 9.15 a.m. within the jurisdiction of Village Shivnakwadi, Taluka Shirol, some unknown person after killing an unknown woman, tied her hands and legs and threw her dead body in a well belonging to one Tukaram Khot and thus tried to cause evidence disappear. On the basis of said report, FIR came to be registered.

3 Mr.Ganesh Gole, learned counsel for the applicant, submits that the case of prosecution is based on circumstantial evidence. There is no direct or indirect evidence to show that the applicant was last seen in the company of the deceased. The learned counsel also invited my attention to the statement of prosecution witness one Gautami Sambhaji Patwardhan and pointed out that the statement of said witness also does not indicate that applicant was last seen in the company of deceased. The only evidence against applicant is recovery of dupatta from the applicant and that too after 1½ month of the incident and

therefore, it cannot be said that it was applicant who committed the murder of deceased. According to learned counsel, the co-accused is also released on bail by the learned trial Court. There are no criminal antecedents. The trial is not likely to commence in near future and if the applicant is not released on bail, great prejudice would be caused to him.

4 Mr.Dedhia, learned APP, on the other hand, opposed the submissions by contending that the applicant was last seen in the company of deceased which is apparent from statements of prosecution witnesses namely, Gautami Sambhaji Patwardhan and Renuka Sunil Bagade. Thus, there is sufficient material on record to suggest the complicity of the accused in the crime. There being no merit in the application, the same deserves to be rejected.

5 Admittedly, case of prosecution rests on circumstantial evidence. While the applicant has come with a case that there is no evidence to show that he was lastly seen in

the company of deceased, the stand of prosecution is otherwise and shows that the applicant was indeed lastly seen in the company of the deceased. Both sides have placed reliance on statements of Gautami Sambhaji Patwardhan and Renuka Sunil Bagade.

6 I have carefully perused the statements of both these prosecution witnesses. It is pertinent to note that the dead body of the deceased was found not in the house but in a well belonging to Tukaram Khot. It is not the case of prosecution that the applicant, who is husband of the deceased, was seen in or around the vicinity of well along with his wife. Therefore, it is wrong on the part of the learned APP to say that the applicant was very much seen in the company of his wife immediately before the incident.

7 The only incriminating circumstance against the applicant is in the form of discovery statement allegedly given by him under Section 27 of the Evidence Act. It appears that the

said disclosure statement was given on 13th November 2019 i.e. nearly after two months of lodging of the FIR. In the said discovery statement it is seen that the applicant had shown his readiness to produce dupatta which was used by him in strangulation of the deceased wife. However, and quite interestingly, the postmortem report did not give any opinion as to the cause of death and viscera was preserved for chemical analysis, in a sense, the cause of death was withheld. Now if the deceased's Chemical Analysis Report is seen in respect of the viscera, it would reveal that no poisonous substance was found. Thus, presently, there is no cause of death on record and the prosecution could not offer any explanation much less satisfactory explanation to the cause of death of deceased. This being so, in my considered opinion, alleged Recovery Panchnama loses its significance.

8 It is also not disputed that the investigation is over and the charge-sheet has been filed. Having regard to the material on record, in my considered opinion, the custody of

applicant is unwarranted. I am, therefore, inclined to allow the application. Hence, the following order :

ORDER

- (i) Applicant – Deepkishor Philang Saay shall be released on bail in Crime No.195 OF 2019 registered with Police Station Kurundwad, Kolhapur, on his executing PR.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (iii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)