

3. The prosecution story is in respect of murder of Salman Shaikh and Sonali Wakade. The allegations are that the main accused Ravi Walmiki had quarreled with one Amir. The deceased Salman Shaikh had intervened and, therefore, Ravi Walmiki had a grudge against him. Therefore, the main accused Ravi Walmiki, with the help of others, committed murder of Salman Shaikh and his friend Sonali Wakade. The dead bodies were found at different places. The dead bodies were in highly decomposed states. The allegations against the present Applicant are that he was one of the associates of the main accused Ravi Walmiki in commission of this offence.

4. The FIR was lodged by Shahrukh Shaikh on 28.7.2018. The deceased Salman was his brother. Salman had left his house on 19.7.2018 at about 12:00 p.m. and he had not returned. Therefore, on 21.7.2018, Shahrukh had given a complaint about his missing to Yamuna Nagar Police Chowky. At the same time, Sonali Wakade @ Max was also missing and, therefore, her relatives had also given a complaint about her missing. The FIR further mentions that

when the informant and others were searching for Salman, his cousin Mohasin Shaikh told him that at around 9:00 p.m., he had seen Salman Shaikh and Sonali Wakade going with 3 to 4 persons from Azad Chowk. Ravi Walmiki, Vishal Walmiki, Gotya @ Nagesh Chavan were the persons who were named by Mohasin Shaikh. Therefore, this FIR was lodged against the aforementioned named persons and other two to three unknown persons. The dead body of Salman Shaikh was found on 23.7.2018 near Darumbre-Sangwade Road in the field of one Dattatray Barane. It was found on 23.7.2018 at about 6:15 p.m..

5. The dead body of Sonali was found on 22.7.2018. Her dead body was taken out from river Pawana at about 4:00 p.m. on that day. It was also decomposed.

6. As far as Salman Shaikh is concerned, the medical opinion shows that the cause of death could not be ascertained as the body was decomposed. However, piece of sternum bone was sent for DNA fingerprinting.

7. As far as Sonali Wakade is concerned, the opinion as to the cause of death was reserved till report of chemical analysis was made available. As of today, the opinion regarding the cause of death of Sonali is also not given by the Medical Officer.

8. Learned Counsel for the Applicant submitted that thus there is only one solitary circumstance of 'last seen together with the deceased' alleged against the present Applicant and that circumstance is also very weak. She submitted that two witnesses, namely, Shamim Juber and Kavita Gaikwad were made to identify the suspects in the test identification parade. The suspects were allegedly accompanying both the deceased on 19.7.2018. She submitted that the test identification parade was held in three parts. The Applicant was put for the parade in the third part. In all the parts, the same dummies were used and, therefore, it was not difficult for the identifying witnesses to find a different face of the Applicant when he was put in the parade on the third occasion.

9. Learned Counsel for the Applicant submitted that there are statements of Rahul Sapkale and Uttam Pasalkar who have seen the deceased in the company of others on the same day in the evening. Out of them, Uttam Pasalkar was not knowing anybody and Rahul Sapkale has named the present Applicant as one of the persons who was with the deceased. Pasalkar was not asked to identify any of the suspects. She submitted that thus the prosecution case against the present Applicant is extremely weak.

10. Shri Yadav, learned A.P.P., on the other hand, opposed this application. He relied on the circumstance of 'last seen together'. He supported the prosecution case so far as the identity of the persons who had accompanied the deceased is concerned. He also relied on the statements of Rahul Sapkale and Uttam Pasalkar to contend that there is sufficient material to show that the Applicant was with the deceased on that day.

Reasons :

11. I have considered all these submissions. Significantly, all these statements, regarding last seen theory implicating the present Applicant, are recorded after the Applicant's arrest on 28.7.2018. The statements of Uttam Pasalkar and Rahul Sapkale were recorded on 31.7.2018 and the statements of Shamin Juber and Kavita Gaikwad were recorded on 29.7.2018.

12. The time of death is not brought on record. The bodies were in highly decomposed condition. Therefore, there is no proximity of time of death and the time at which both the deceased were seen last with the present Applicant and others. Similarly the dead bodies were also found at some distance and, therefore, there is no proximity of place either.

13. As rightly criticized by learned Counsel for the Applicant, the test identification parade was not held in a proper manner. When the Applicant was put in the parade, the same dummies were used who were seen by the witnesses in the earlier part of the parade regarding other accused. Rahul Sapkale's statement is also about last seen together but that was also recorded on 31.7.2018.

14. At this stage, the identity of the dead bodies is not in really dispute because those were identified by the relatives of the deceased.

15. Considering all the above factors, the only material against the present Applicant is theory of 'last seen together'. As discussed earlier, in this case, this is a very weak piece of evidence. There is no motive. There is no other incriminating circumstance in the nature of recovery or other incriminating factors. The investigation is already over and the charge-sheet is already filed. Therefore, the Applicant deserves to be released on bail. Hence, the following order :

ORDER

- (i) In connection with C.R.No.502/2018 registered at Nigdi Police Station, Pune, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Criminal Bail Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)