

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2448 OF 2021

SUNIL NIMBA MEMANE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.V.S.Mishra, Advocate for the Applicant.

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

CORAM : V. G. BISHT, J.

RESERVED ON : 17th NOVEMBER 2021
PRONOUNCED ON : 25th 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.278 of 2019 registered with Police Station Junnar, Pune, for offences punishable under Section 302, 394 of the Indian Penal Code (IPC).

AVK

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2 It is the case of prosecution that on 21st November 2019, at about 11.00 a.m., informant and his wife had been to their agricultural field by leaving informant's aunt, namely, Jijabai, at his house. At about 2.00 p.m. informant came and saw the dead body of Jijabai hanging on the wooden pole of the roof of the house. The informant also noticed that cash amount of Rs.3,000/- and gold ornaments were also missing. In all, cash amount and ornaments worth Rs.8500/- were taken away by some unknown person. Accordingly, the complainant lodged the report.

3 Mr.V.S.Mishra, learned counsel for the applicant, submits that the First Information Report (FIR) was basically against one unknown person. The whole case of prosecution is based on circumstantial evidence. The only incriminating evidence against the applicant is the disclosure statement allegedly given by him under Section 27 of the Evidence Act, pursuant to which ornaments and cash worth Rs.3,000/- were

recovered. However, according to the learned counsel, description of ornaments given in the Seizure Panchnama and as given in the statement of the informant's wife are not matching. For all these reasons, the applicant deserves to be enlarged on bail.

4 Mr.Dedhia, learned APP, on the other hand, opposed the submissions while pointing out the conduct of the applicant post incident and in this regard invited my attention to the statement of informant's wife, namely, Tulsabai Kisan Sable. Further, according to the learned counsel, there is recovery of stolen articles at the instance of the applicant. There being sufficient evidence on record, the application is liable to be rejected, argued learned APP.

5 Perused the FIR and investigation papers. Admittedly, FIR was lodged against unknown person. The prosecution is heavily relying on two things. Firstly, the statement of informant's wife, namely, Tulsabai Kisan Sable, and, secondly,

recovery of gold ornaments and cash amount, at the instance of the applicant.

6 Statement of Tulsabai Kisan Sable shows that after the incident when she was taken to the house by her husband, she found missing cash amount of Rs.3,000/- and two gold nose rings worth Rs.3,000/-, silver challa worth Rs.500/- and one gram of gold nose ring worth Rs.1500/- belonging to the deceased. It is her further statement that many people had gathered from the locality. At that time, she received a call on her mobile from her nephew Sunil Nimba Memane i.e. the present applicant, telling her that she should not tell anything to the Police Patil in respect of the death of the deceased and should not file any police complaint. He, allegedly, further told her that after he reaches there, then they will decide as to what is to be done. This conversation, according to the learned APP, questions the conduct of applicant and shows that he was involved in the offence.

7 As far as the inference drawn by the learned APP from the above conversation is concerned, it may not be proper to jump to such a conclusion in absence of any supporting convincing and inspiring evidence.

8 Next circumstance relied on by the learned APP is the alleged recovery at the instance of the applicant. The Memorandum of Panchnama recorded under Section 27 of the Indian Evidence Act dated 22nd November 2019 is on record. It appears that at the instance of the applicant Article Nos.1 to 7 came to be seized. As far as Article Nos.1 to 4 are concerned, they are not in consistent with the statement of informant's wife, particularly in respect of weight and price of the ornaments / articles in question. Except above, nothing is forthcoming.

9 Investigation is, admittedly, completed. There are no criminal antecedents. The trial may take its own time. In such circumstances, I am inclined to allow the application. Hence, I pass the following order :

ORDER

- (i) Applicant – Sunil Nimba Memane shall be released on bail in Crime No.278 of 2019 registered with Police Station Junnar, Pune, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall regularly attend the proceedings before the trial Court.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own

merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)