

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3226 OF 2021

SHASHIKANT @ BABA LAXMAN PATIL)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Satyavrat Joshi i/b. Mr.Vinod Chate, Advocate for the Applicant.

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

CORAM : V. G. BISHT, J.

**RESERVED ON : 7th DECEMBER 2021
PRONOUNCED ON : 20th DECEMBER 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.I-131 of 2020 registered with Police Station Panvel, for offences punishable under Section 302, 201, 363 read with 34 and 120B of the Indian Penal Code (IPC).

2 Informant is Police Patil of Village Morbe, Taluka Panvel, District Raigad. On 16th September 2020 he got an information that dead body of an unknown woman is floating in Morbe dam. Accordingly, he went there and found dead body of a woman floating there. He, accordingly, lodged the First Information Report (FIR).

3 It appears that during the course of investigation it revealed that the applicant was having illicit relations with the deceased. He also had taken Rs.2 lacs from her. The deceased was constantly pestering him to return the said amount and because of this, he was also defamed in the village. The prosecution alleges that the applicant along with co-accused Ravindra Thakur and Akshay Panchal took the deceased in his car on 9th September 2020 and while co-accused Akshay Panchal assaulted the deceased by means of knife on her neck, the applicant strangulated her by means of a nylon rope. They all then took the dead body to a tenement near the house of

applicant where accused Nilesh Phadake advised that the dead body be thrown into Morbe dam after tying with a stone.

4 The prosecution further alleges that Kumari Pari Mourya, aged 7 years, daughter of the deceased was also taken into custody by the said accused.

5 Mr.Satyavrat Joshi, learned counsel for the applicant, submits that the whole case of prosecution is based on circumstantial evidence. All the other accused have been admitted on bail and therefore, the applicant claims parity. According to the learned counsel the only incriminating evidence against him is in the form of last seen, by virtue of the statement of prosecution witness, namely, Amrut Malhari Avte. However, his statement shows that he had seen the applicant in the company of deceased on 9th September 2020 whereas the dead body was found on 16th September 2020. According to the learned counsel what transpired between 9th September 2020 to 16th September 2020 is a mystery. Having regard to the fact that

investigation is over and charge-sheet has been filed, the applicant deserves to be released on bail.

6 Mr.H.J.Dedhia, learned APP, on the other hand, invited my attention to the statement of daughter of deceased and as also recovery at the instance of applicant. According to the learned APP, parity cannot be claimed as the applicant and the other accused released on bail are differently placed. There being no merit in the application, the same is liable to be rejected.

7 If the charge-sheet is to be read carefully, then it would be seen that the main role in the alleged offence is assigned to accused Akshay Panchal and the present applicant. It is specifically alleged in the charge-sheet that the co-accused Akshay Panchal had given blow of knife on the neck of the deceased whereas the applicant herein had strangled the deceased with the help of nylon rope. Co-accused Akshay Panchal has been released on bail by the learned Additional

Sessions Judge, Panvel, Raigad, on 31st May 2021. The other accused are also on bail. As far as the role of present applicant is concerned, the learned APP was not able to pinpoint on what basis it was said that the applicant had strangled the deceased with the help of a nylon rope.

8 As far as last seen theory is concerned, statement of Amrut Avte shows that on 9th September 2020 he had dropped the deceased by his autorickshaw up to crematorium ground where the applicant was with his car. According to him, both of them then left the crematorium ground in the car. It must be noted here that he had seen the applicant in the company of deceased on 9th September 2020 whereas the dead body was found floating in Morbe dam on 16th September 2020. In between what happened, there is no evidence.

9 Similarly, there is disclosure statement of applicant given under Section 27 of the Indian Evidence Act on 21st September 2020. By virtue of said disclosure statement, he

showed the place of occurrence, vehicle used in the crime and the clothes worn by him, deceased, Ravi Thakur and Akshay Panchal.

10 Lastly, there is statement of daughter of deceased which shows that she was in custody of the applicant.

11 The whole case of prosecution is based on circumstantial evidence. The material on record does not satisfactorily establish the chain of circumstance and pinpoint positively the role of applicant in the alleged crime. I may note here that one of the main accused, namely, Akshay Panchal, who is similarly placed, if the charge-sheet is to be believed, then one finds that he has already been admitted on bail by the learned trial Court. As already noted, circumstances on record are not such which would pave way for an irresistible conclusion, prima facie atleast, to hold that applicant is involved in the alleged offence.

12 Investigation is admittedly over and charge-sheet has been filed. There are no criminal antecedents. Therefore, the custody of applicant is unwarranted.

13 In view of above, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Shashikant @ Baba Laxman Patil shall be released on bail in Crime No.I-131 of 2020 registered with Police Station Panvel, 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 attend the Court proceedings regularly.
- (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.)

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