

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 1050 OF 2021

(Sudhir @ Chetan s/o Dilip Jawade ..vs.. State of Maharashtra, through its PSO, PS Alipur, Wardha)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Mahesh Rai, Counsel for the applicant,
Mr. N.S. Rao, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 16-11-2021

The applicant and the co-accused are implicated in Crime 186/2020 registered at Alipur Police Station, District-Wardha for offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

2. The accusation is that the accused killed Deepak Fulzele at the agricultural field of Mr. Pramod Mahajan by assaulting him with stones and strangulating him.

3. In brief, the prosecution case is that the wife of the applicant was residing at her parental house at village Sonegaon, Tahsil-Deoli, District-Wardha. On 26-10-2020 the brother of the deceased Mr. Ashish accompanied the accused to village Sonegaon. While the applicant halted there, Mr. Ashish and the co-accused returned to their village. On the next day, on the pretext that the applicant is extremely drunk, the co-accused persuaded the deceased to accompany him to village

Sonegaon. There is material on record to indicate that at 7-45 p.m. or thereabout the applicant, the deceased and the co-accused left the parental home of the applicant's wife on a motorcycle. The body of the deceased is discovered on 28-10-2020.

4. While there is additional material against the co-accused in the form of recoveries pursuant to the statement under Section 27 of the Indian Evidence Act, the primary incriminatory material against the applicant appears to be the last seen theory.

5. The learned Counsel for the applicant Mr. Mahesh Rai would submit that the time of death which is culled out by the prosecution from the Post-Mortem Report can only be approximate and that since other than the last seen theory, and the material in support thereof is fragile, there is no other incriminatory material, the applicant is entitled to bail.

6. I have scrutinized the material in the charge-sheet. It would ultimately be for the trial Court to consider whether the last seen theory can be invoked. Whether the possibility of third person intervention is excluded is something which can be decided only after the evidence is adduced. At this stage, it appears to be common ground, that other than the last seen theory there is no incriminatory material at least as against the applicant. The theory that the deceased had a fancy for

the applicant's wife and which was the motive appears to be only on the basis of the disclosure statement of the co-accused.

7. Considering that the applicant has no criminal antecedents, I am inclined to grant bail, particularly considering the material on record. However, since the prosecution is relying on the statements of the applicant's wife and her family members to prove the last seen theory, stringent conditions shall have to be imposed.

8. The application is allowed.

9. The applicant shall be released on bail on executing personal bond of Rs.16,000/- with a solvent surety of like amount.

10. Till the material witnesses are examined, the applicant shall not establish any contact with the material witnesses including the wife and her family members. Even a singular breach of this condition, whether the contact is established physically or by any other means of communication, shall entail cancellation of bail.

11. The applicant shall not enter the territorial limits of district Wardha, save and except to attend the Court proceedings, till the trial is concluded.

12. The applicant shall attend each date of hearing

scrupulously.

13. The applicant shall not leave the country without the permission of the trial Court.

JUDGE

adgokar