

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 44 OF 2022

Aakash Bhagwat Shinde
Age : 19 Years, Occu. : Labour,
R/o Devidahegaon, Tq. Ghansavangi,
Dist. Jalna. .. Appellant

Versus

1. The State of Maharashtra and another .. Respondents

Shri P. P. More, Advocate for the Appellant.
Shri K. S. Patil, A.P.P. for the Respondent No. 1.
Ms. Sunita G. Sonawane, Advocate for the Respondent No. 2.

**CORAM : SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.
DATE : 14TH JUNE, 2022.**

FINAL ORDER :

. The appellant is seeking his release on bail in connection with FIR bearing C.R. No. 283/2021 registered with Ghansavangi Police Station for the offences punishable U/Sec. 302, 363, 364, 120-B, 201 r/w Section 34 of the I. P. Code and U/Sec. 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Heard Mr. More, the learned counsel for the appellant, Mr. Patil, the learned Assistant Public Prosecutor for the respondent No. 1 and Ms. Sonawane, the learned counsel for the respondent No. 2/father of the deceased.

3. The prosecution case is about murder of one Aniket Ghuge. On 01st August, 2021 the deceased had attended a procession. After about 10.00 O'clock, the procession was over. Aniket told Abhishek to go ahead. Abhishek returned home, but till 10.30 p.m. Aniket did not return. Abhishek and his cousin started to search for Aniket. At about 11.30 p.m., they saw accused Mahadev Shinde coming from a temple. They asked him about Aniket, but he denied any knowledge about Aniket. After that, Abhishek and others tried to search for Aniket. He was not found. Therefore, Abhishek lodged a complaint about his missing with the police station. In that complaint he had not expressed any suspicion against anyone. Since Aniket did not return till 03rd August, 2021, FIR was lodged vide Cr. No. 283/2021 at the aforesaid police station U/Sec. 363 of the Indian Penal Code. The investigation was carried out. During the investigation the main accused Mahadev Shinde was arrested. At his instance dead body of Aniket was found in a highly decomposed state. Aniket's father identified the dead body. Therefore Section 302 of the I. P. Code was added. During the course of investigation, the appellant was arrested on 08th August, 2021. After conclusion of the investigation charge sheet was filed. The appellant preferred an application for bail before the Special Court. The said application was rejected. Therefore, the present appeal is filed by the appellant.

4. Learned counsel for the appellant submitted that it is a case based on circumstantial evidence and there are hardly any

circumstances against the present appellant. The major evidence and allegations are against main accused Mahadev Shinde at whose instance the dead body was discovered. As far as the appellant is concerned, the only circumstance against him is that a broken piece of mobile phone and a stone was recovered at his instance. But those two articles are not shown to be connected with the present offence. He submitted that, considering weak nature of evidence, appellant's further detention as an under trial prisoner is not necessary.

5. Learned A. P. P. for the State opposed this application. Learned counsel for the respondent No. 2 also opposed the application. Both of them submit that, recovery at the instance of present appellant is sufficient. Besides that a piece of rope was found in the house of the appellant and, therefore, involvement of the appellant is clear.

6. We have considered these submissions and have perused the charge sheet. The postmortem report shows that the dead body was found in highly decomposed state. The cause of death was not mentioned. The dead body was discovered at the instance of other accused Mahadev Shinde. As far as the appellant is concerned, as submitted by the learned counsel for the appellant, there is a recovery panchanama concerning him. It is dated 10th August, 2021. Pursuant to the statement given by the appellant a broken piece of mobile phone a sim card and a stone was recovered from bushes.

7. The important aspect of this matter is that neither the broken piece of mobile phone, nor the sim card is shown to have any connection with the deceased and the offence. There is nothing to show that these articles were belonging to the deceased. The stone was found at an open space, which was accessible to all. Besides this very weak piece of evidence, there is absolutely nothing in the entire charge sheet against the present appellant. In this view of the matter, further detention of the appellant as an under trial prisoner during the entire course of trial is unwarranted. He deserves to be released on bail. Hence following order.

8. The appeal is allowed.

9. The appellant is directed to be released on bail on executing P.R. bond in sum of Rs. 25,000/- (Rs. Twenty Five thousands only) with one or two sureties surety in the like amount.

10. The criminal appeal is disposed of.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]