

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

BAIL APPLICATION NO.474 OF 2022

Shaku @ Sharpan Neharya Kale ... **APPLICANT**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....

Mr. S.S. Gangakhedkar, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondent – State, assisted by
Mr. K.A. Ingle, Advocate for original complainant

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WITH

CRIMINAL APPLICATION NO.1434 OF 2022

Sangeeta w/o Nilesh Pawar ... **APPLICANT**

VERSUS

Shaku @ Shapnur Nehrya Kale & anr. ... **RESPONDENTS**

.....

Mr. K.A. Ingle, Advocate for applicant
Mr. S.S. Gangakhedkar, Advocate for respondent No.1
Mr. N.T. Bhagat, A.P.P. for respondent No.2 – State

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CORAM : R. G. AVACHAT, J.

DATE : 28th JULY, 2022.

PER COURT :

Criminal Application No.1434/2022 is allowed.

The original complainant is permitted to assist learned A.P.P.

2. Heard. This is an application for bail under

Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.349/2020, registered at Shevgaon Police Station, District Ahmednagar for the offences punishable under Sections 302, 201, 328 read with Section 34 of the Indian Penal Code.

3. The F.I.R. has been lodged by the victim himself on 29/6/2020. It is his case that the applicant and his brother are his relatives. They are residents of village Hatgaon, Taluka Shevgaon, District Ahmednagar. The informant hails from Chandanpuri, Taluka Ambad, District Jalna. Since for one month next before 29/6/2020, the informant had been staying at the house of applicant's brother Dharmya. It is his case that, on 28/6/2020 by 7.00 p.m., the deceased had settled the quarrel among Dharmya, Shaku (present applicant) and Balya. On 29/6/2020, Dharmya, Shaku and Balya told the informant that they would drop him at his house. They took him on motorbike. On way, at 5 Kms. away from Hatgaon, the trio questioned the informant as to why did he intervened in their quarrel. The trio had one bottle with them. They forcibly administered the informant liquid substance contained in the bottle. Then the informant was dropped at his residence. The informant started feeling

uneasy. He had bouts of vomiting. He was, therefore, rushed to the hospital. Unfortunately, he breathed his last on 3/7/2021.

4. Based on his statement (F.I.R.), initially crime for the offence punishable under Section 307 read with Section 34 of the Indian Penal code was registered. On his demise, Section 302 of the Indian Penal code was invoked. The crime was investigated. The applicant and his brother came to be proceeded against by filing the charge sheet.

5. The learned counsel for the applicant would submit that, there is one day's delay in lodging the F.I.R. The informant himself appears to have consumed poisonous substance. The applicant and his brother have been falsely implicated. He brought to the notice certain papers to reinforce his submissions. According to him, the C.A. report indicates that the blood of the deceased did not contain poisonous substance. He, therefore, urged for grant of the application.

6. The learned A.P.P. and the learned counsel for the original complainant would, on the other hand, submit for rejection of the application. According to them, it is an

offence of murder. The learned counsel for the original complainant relied on the judgments of the Apex Court in case of Anant Chintaman agu Vs. The State of Bombay [AIR 1960 SC 500] and Manohar s/o Kisan Maraskolhe Vs. The State of Maharashtra [2001 ALL MR (Cri) 1618] to submit that even though the Chemical Analyser's report shows no presence of poison in viscera, liver, spleen and kidney, it is not necessary to constitute an offence of murder that poison should be detected in viscera. The learned counsel read out certain paragraphs from both the authorities to ultimately urge for rejection of the bail application.

7. The pains taken by learned counsel for the original complainant needs to be appreciated. The facts of the present case are, however, different. The learned counsel for the applicant has placed on record copy of station diary entry dated 3/7/2020, wherein it has been stated that, the informant (deceased) and sister of the applicant were emotionally involved. The applicant and his family members were oppose to their relationship. The informant, therefore, consumed poisonous substance. There is on record M.L.C. paper suggesting informant's admission to AIIMS Hospital. It has been recorded therein that, it was a case of consumption

of poisonous substance. In inquest panchanama also it has been recorded that the deceased had consumed poisonous substance. True, in the post mortem report, probable cause of death is given as "pulmonary consolidation in clinical case of poisoning". It is also true that the C.A. report indicates that the blood of the deceased did not contain poisonous substance. The C.A. report may be such as a result of the deceased to have died a few days after the alleged incident. This Court is in agreement with what has been submitted by the learned counsel for the original complainant relying on the aforesaid two authorities.

8. The fact is, however, that, there are papers on record to indicate that the deceased was emotionally involved with one Nani, sister of the applicant herein. Nani had even conceived and delivered a child. In the hospital papers, the applicant is shown to be the father of the new born. I have reason to believe from papers placed on record by learned counsel for the applicant that the applicant and his family members were oppose to the relationship between the deceased and Nani. The deceased and Nani wanted to marry each other. On account of opposition from the family members, just 3 – 4 days before the incident in question,

Nani had consumed poisonous substance. She was, therefore, admitted to hospital. The learned counsel for the applicant, has, therefore, every reason to contend that the deceased himself consumed poisonous substance because of all these circumstances, but falsely implicated the applicant and his brothers. In this view of the matter, and the fact that on investigation the charge sheet has been filed and the applicant having been behind the bars for little over one year, I am inclined to grant bail to the applicant. Hence the order :

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.349/2020, registered at Shevgaon Police Station, District Ahmednagar for the offences punishable under Sections 302, 201, 328 read with Section 34 of the Indian Penal Code on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.
- (iii) The applicant shall not tamper with the prosecution evidence.

**(R. G. AVACHAT)
JUDGE**

fmp/-