

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.491 OF 2022

1. Madhav s/o Sopan Thotve,
2. Pandhari s/o Mariba Gawalvad,
3. Dnyaneshwar s/o Laxman Kawlekar **...Applicants**

VERSUS

The State of Maharashtra **...Respondent**

.....
Senior Counsel for Applicants : Mr. V. D. Sapkal i/b
Mr. S. R. Sapkal

APP for Respondent-State : Mr. S. B. Narwade
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 26-04-2022

ORDER :

1. The applicants No.1 and 2 came to be arrested on 27-11-2021 and applicant No.3 came to be arrested on 30-11-2021 in connection with Crime No.251 of 2021, by Mukramabad Police Station, Taluka Mukhed, District Nanded, for the offence punishable under Section 302, 201, 364, 365 r.w.34 of the Indian Penal Code. They have filed present application under Section 439 of the Code of Criminal Procedure.

2. It will not be out of place to mention here itself that the investigation is complete and charge-sheet came to be filed on 10-02-2022, and therefore, the custody of the present applicants is not necessary for the purpose of further investigation. It is, therefore, required to be considered as to what evidence has been collected against the applicants.

3. Heard learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. S. R. Sapkal and learned APP Mr. S. B. Narwade for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

4. The FIR has been lodged by one Ravikant Nagnath Jadhav on 27-11-2021. Occurrence is stated to have taken place between 31-10-2021 to 27-11-2021. The FIR was lodged only against applicants No.1 and 2. It was stated in the FIR that informant is the brother of deceased Suryakant. Suryakant had gone to Vita, Taluka Khanapur, District Sangli, as JCB Operator and he had come to Udgir for taking poclain machine of his employer. That poclain machine was at village Narsi. He stayed at night on 30-10-2021 in the house of his

sister at Ravankola. When he was at about 01.00 p.m. of 31-10-2021 around village Barhali, he gave a phone call to his mother on mobile and told that he would take the poclain machine from Narsi and then he would come. Thereafter, there was no contact between Suryakant and his family members, and therefore, the mother had lodged missing report. Thereafter, on 27-11-2021 the informant says that Suryakant had love affair with a girl in his relations who is the daughter of applicant No.1, and after the fact was revealed, Suryakant went to Sangli for work. Present applicants No.1 and 2 had called informant from Pune and asked him that he should give understanding to Suryakant, and therefore, the informant had told Suryakant that he shall not talk with the girl. Thereafter also it was then heard that Suryakant was still talking with girl, and therefore, applicant No.1 had given threat to informant that he would kill the family members. At the time the FIR was lodged it was the suspicion that was expressed by him that Suryakant might have been abducted by applicants No.1 and 2 and would have been kept somewhere.

5. It appears that on the same day of the FIR, the applicants No.1 and 2 came to be arrested, and thereafter, applicant No.1 had

discovered the dead body of Suryakant from the field of one Manohar Sakhaji Ravangaonkar from their village. The dead body was identified. Inquest panchanama was prepared and it was sent for post-mortem. The other co-accused came to be later on arrested and after the investigation the charge-sheet has been filed.

6. The case is dependent on circumstantial evidence, however, the circumstances against applicant No.1 are strong. He had discovered the dead body of Suryakant. It was tried to be submitted by the learned Senior Counsel Mr. V. D. Sapkal that it appears that the discovery is first and thereafter it has been shown to be under Section 27 of the Indian Evidence Act. It is to be noted that the time of the arrest of applicant No.1 is stated to be 15.45 hours on 27-11-2021, he gave the memorandum between 09.12 to 09.45 a.m. on 28-11-2021, and the place was shown, dead body was taken out by excavation between 14.35 to 16.57 hours on 28-11-2021. We will have to go by the timings those have been given in the charge-sheet. Even if for the sake of arguments it is accepted that applicant No.1 was merely in custody of police and he had discovered the dead body, yet it would be relevant under Section 8 of the Indian Evidence Act in view of the decision in *Aghnoo Nagesia*

vs State Of Bihar, reported in 1966 SCR (1) 134.

7. Further, evidence against applicant No.1 is the discovery of wooden handle or log which he had concealed in land. As regards the statements of witnesses are concerned, they have stated that applicant No.1 had the reason to be inimical with Suryakant in view of the fact that his daughter was having love affair with Suryakant. Even the statement of the daughter of applicant No.1 has been recorded twice and in both statements she has stated that she had love affair with Suryakant and it was not approved by her father. Thereafter, if we consider the post-mortem report then it can be seen that it was highly decomposed and the final cause of death was not taken. However, now the learned APP is showing the final certificate has been given by the Medical Officer on 10-04-2022 stating that the final cause of death is, "cerebrovascular arrest by head and neck injury." Therefore, the death of Suryakant can be seen to be homicidal one. The statements of those persons who had dug the place which was shown by applicant No.1, and thereafter, the dead body was excavated have also been recorded. Statement of mother of the deceased would show that according to her, she had heard voice of Suryakant while he was talking with somebody else and telling that he will not do such act in future. But then she

has stated that when she tried to contact Suryakant again, the contact could not be established, and therefore, she went to one Prakash Patil who had then contacted applicant No.1, applicant No.1 came to house of Prakash Patil and disclosed that Suryakant had met him but he gave jerk to his hand and fled away. We cannot get concrete idea from this statement, but suffice to say that she was also saying that there was some reason for applicant No.1 to commit such act. The statements of witnesses have also been taken under Section 164 of Cr.P.C. Taking into consideration all those statements and the other evidence that has been collected, there appears to be no independent evidence against applicants No.2 and 3, however, there is evidence against applicant No.1, and therefore, applicant No.1 is not entitled for bail, but applicants No.2 and 3 cannot be asked to languish in jail with such kind of evidence. Hence, following order.

ORDER

- 1) Application is hereby partly allowed.
- 2) Application in respect of applicant No.1 is hereby rejected.
- 3) Applicant No.2 Pandhari s/o Mariba Gawalvad and applicant No.3 Dnyaneshwar s/o Laxman Kawlekar,

arrested in connection with Crime No.251 of 2021, registered with Mukramabad Police Station, Taluka Mukhed, District Nanded, for the offence punishable under Section 302, 201, 364, 365 r.w.34 of I.P.C., be released on P.R. Bond of Rs.50,000/- each with two solvent sureties of Rs.25,000/- each.

4) Applicants No.2 and 3 shall not tamper with the evidence of prosecution in any manner.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.