

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

BAIL APPLICATION NO.552 OF 2022

Sarfaraj Iqbal Shaikh .. Applicant
Age. 25 years, Occ. Labour,
R/o. Ramgadh, Tq. Shrirampur,
Dist. Ahmednagar.

Versus

The State of Maharashtra .. Respondent

Mr.Satej S. Jadhav, Advocate for the applicant.
Mr.V.M. Kagne, APP for the respondent/State.

CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 22.04.2022
PRONOUNCED ON : 04.05.2022

ORDER :-

01. The applicant has been arrested on 07.03.2022 at about 01=15 a.m. in connection with Crime No.55 of 2022, registered with Ghargaon Police Station, Dist. Ahmednagar, for the offences punishable under section 304, 379 read with section 34 of the Indian Penal Code.

02. Heard Mr. Satej S. Jadhav, learned Advocate for the applicant and Mr. V.M. Kagne, learned APP for the respondent/State. In order to cut-short, it

can be stated that both of them have vehemently made submissions in support of their respective contentions.

03. Perusal of the FIR would show that it has been lodged by father of the deceased. The informant Raosaheb Sukhdeo Vikhe has stated that deceased Yogesh was doing work with his maternal uncle by residing with him. However, he had come to house about 2-3 days prior to the incident. Around 08=00 p.m. of 05.03.2022 one juvenile and Aditya Anil Sonawane had come to fetch Yogesh, though father was resisting. Yogesh told that he would come in few minutes. However, at about 07=00 a.m. it was informed to the informant that Yogesh has expired and the said information was given by Loni Police Station to the villagers. Therefore, the informant went to PMT Hospital, Loni. He found that there were red coloured marks on the stomach of Yogesh. Upon inquiry he came to know that in all five persons were arrested by police patrolling party in the intervening night of 05.03.2022 to 06.03.2022. At that time Yogesh was in injured condition. He was admitted to PMT Hospital, Loni but was declared dead. It was told that other accused persons had forced Yogesh to climb on the electric tower in order to steal aluminum wire and this act was done between 1 to 3 a.m. The cut wires were

kept in Eicher tempo bearing No. MH-17-BD-0297 at one place. When Yogesh was cutting the wire he got trapped in the loop, which was around his stomach. He was kept hanging for a while on the tower and thereafter he was taken out. When they were putting him in the vehicle, they were arrested. It is, therefore, prosecution story that present applicant not only committed theft but knowing fully well that it was dangerous to cut such wires, yet, forced Yogesh and were responsible for his death.

04. The police papers would show the spot panchanama. It is a big tower of about 49 meters height. The wires from section which was at 26 meters height were missing. That means he might have fallen from that height or got trapped in loop while cutting said wires. We cannot undermine the fact that even Yogesh had gone to commit theft along with accused persons and applicant. If we consider the statements of police witnesses, which had nagged the applicant and injured, it can be seen that they had not seen the act of theft but they found an Innova vehicle in suspicious manner. They raised suspicion that they might be the persons who had committed theft in ATM machine. When the Innova vehicle was checked after following it, they found a boy who was in injured condition made to sleep on the rear seat. It

was disclosed to the police that he got injured in an accident. They were taken to hospital and when it was found that the boy was having marks around his stomach, accused persons were asked about the story. The post-mortem report gives in all five injuries in column No.17 and the probable cause of death is hemorrhagic shock due to poly trauma. Thus, when knowing fully well, if Yogesh had climbed the tower and was also taking part in the act of theft, then it cannot be said that he was forced to climb. It is doubtful whether a case has been made out under section 304 of the IPC.

05. As regards section 379 of the IPC is concerned, the material which was stolen has been recovered. The informant is not the owner of the articles stolen and under such circumstances, the applicant deserves to be released on bail. Hence, following order :-

ORDER

- i) The application stands allowed.
- ii) Applicant – Sarfaraj Iqbal Shaikh, who has been arrested in connection with Crime No.55 of 2022 registered with Ghargaon Police Station, Dist. Ahmednagar for the offences punishable under sections 304, 379 read with section 34 of the Indian Penal Code, be released on PR and SB of Rs.20,000/- (Rupees Twenty Thousand).

iii) The applicant shall attend the police station on every Monday and Thursday between 10.00 a.m. to 02.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

v) Bail before Trial Court.

[SMT. VIBHA KANKANWADI, J.]