

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

BAIL APPLICATION NO. 592 OF 2022

Sunil Dhondiram Kharat ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

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Mr. S.G. Bobde, Advocate for applicant
Mr. V.S. Badakh, A.P.P. for respondent – State
Mr. C.V. Bhodkhe, Advocate h/f Mr. R.V. Gore, Advocate for assist to A.P.P.

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**CORAM : R.G. AVACHAT, J.
DATE : 20th AUGUST, 2022**

PER COURT :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 1044 of 2021 registered with MIDC Waluj Police Station, Dist. Aurangabad for the offence punishable under Sections 302 and 201 of the Indian Penal Code.

2. Heard. Perused the First Information Report (“F.I.R.”) and related police papers.

3. The F.I.R. has been lodged by one Deepali on 20th October, 2021. It is her case that she was residing at her mother’s house at Waluj. The

informant has one younger sister and two brothers as well. Although the informant was married, on account of marital discord she was residing away from her husband. There was an extra-marital relationship between the informant's mother – Maria and the applicant herein. The applicant too was married and has a grown-up son - Sachin. The applicant's son - Sachin has kidnapped/abducted Rupali, sister of the informant, in August 2021. Since then there used to be frequent quarrels between the applicant and informant's mother – Maria.

4. It has been alleged in the F.I.R. that on 23rd September, 2021 by 12.00 noon, Maria took her son Aditya to Sahara Hospital, Jogeshwari as Aditya was not keeping well. Nikhil had also accompanied Maria. By 01.30 p.m. both, Nikhil and Aditya returned home. Maria didn't. On enquiry with Nikhil the informant learnt that the applicant had been to the hospital and took Maria with him in search of Sachin and Rupali. The informant had, therefore, made a phone call to Maria to learn that she has been with the applicant and would be back home after a while. Since Maria did not return home, a missing person's complaint was lodged on 28th September, 2021. On 02nd October, 2021, the informant was called to the police station as a dead body was found in a well at *Eklahera Shivar*. The informant identified that is was of her mother's. The informant, therefore, lodged F.I.R. against the applicant herein.

5. During investigation of the crime it was found that the applicant had taken the deceased with him on motorcycle from the hospital. He made a disclosure statement and pointed out the place where had he committed murder of deceased – Maria. The motorcycle came to be seized from him.

6. Learned counsel for the applicant would submit that the case is based on circumstantial evidence. The F.I.R. has been lodged twenty-six days after the alleged incident. The applicant has been arrested merely on suspicion. He, therefore, urged for grant of the application.

7. Learned A.P.P. would, on the other hand, urged for rejection of the application in view of seriousness of offence.

8. Considered the submissions advanced. The case is based on circumstantial evidence. On investigation, the charge-sheet has been filed. The F.I.R. was lodged twenty-five days of the alleged incident. Dead body of the informant's mother was found in a well. The cause of death certificate indicates that deceased might have died due to smothering. C.A. report regarding viscera does not indicate it to be a case of poisoning. The disclosure statement allegedly made by the applicant is inadmissible in evidence. The averments in the F.I.R. are based on hearsay. The applicant allegedly took the deceased with him from the hospital. Statement of Nikhil,

who was with the deceased in the hospital, simply indicates that the applicant had been to the hospital to inform that whereabouts of Rupali were found. Both, Nikhil and Aditya, who were in the company of the deceased in the hospital did not state the applicant to have had taken the deceased with him from the hospital on the given day. The applicant has been in jail for about one year. It will take time for commencement and conclusion of the trial.

9. For all the above stated reasons, I am inclined to allow the application. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released, in connection with Crime No. 1044 of 2021 registered with MIDC Waluj Police Station, Dist. Aurangabad for the offences punishable under Sections 302 and 201 of the Indian Penal Code, on 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, J.)

SSD