

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

BAIL APPLICATION NO. 773 OF 2022

Shaikh Amir Shaikh Babu	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. M. P. Tripathi, Advocate for applicant
Mr. A. V. Deshmukh, APP for respondent - State

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CORAM : R. G. AVACHAT, J.

DATED : 12th AUGUST, 2022

PER COURT :-

1. 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.0279/2022, registered with Jintur Police Station, District Parbhani, for the offence punishable under Section 302 r/w 34 of the Indian Penal Code.

2. Heard. Perused the First Information Report (FIR) and related papers.

3. The FIR has been lodged by the widow of the deceased on 06.08.2021. It is her case that her husband Ayyaz Khan Pathan (deceased) would ply auto-rickshaw to earn their living. In the

morning of 02.08.2021, Ayyaz Khan received a phone call of his friend Mohammad Qureshi (co-accused). The deceased, therefore, left home in his auto-rickshaw. He, however, did not return home. A search was therefore made for him. Mohammad Qureshi and his colleagues (co-accused including the applicant) were not at their respective house. It was found that the auto-rickshaw of the deceased was stationary near one Dhaba in Shevdi Shivar. One footwear and some grass were in the auto-rickshaw. During inquiry, it was revealed that the applicant and the co-accused had taken the deceased with them. Some quarrel took place among them. The applicant and co-accused, therefore, took the deceased to a well in one land. They pushed the deceased in the well and returned. This was seen by the landlady - Geetabai. On investigation, the charge-sheet has been filed.

4. The learned Advocate for the applicant would submit that it is a case based on circumstantial evidence. The applicant is 20 years of age. There is no motive for the applicant to eliminate the deceased. It is the case based on last seen theory only. The witness who claimed to have last seen, gave her statement long after the alleged incident. He, therefore, urged for grant of the application.

5. The learned APP would, on the other hand, submit for rejection of application on the ground of it being a serious offence. The landlady had seen the applicant and co-accused going to the well and returning there-from without one of the persons with them.

6. Considered the submissions advanced. Perused the FIR and the papers of investigation. The case is based on circumstantial evidence. The deceased would ply auto-rickshaw to earn his living. On 02.08.2021, he left the house in his auto-rickshaw in response to a phone call of co-accused Mohammad Qureshi. He, however, did not return home. His dead body was found in a well. The prosecution is relying on a statement of landlady (Geetabai). It has been recorded on 07.08.2021. It is in her statement that she was engaged in agricultural operation in her field. It was 10.00 in the morning of 02.08.2021, she saw four persons proceeding towards the well in her field. They were quarreling inter-se. Two of them had caught hold of one while being taken to the well. On her inquiry, they told her to have come to collect acacia leaves. It is also her case that after a while, she saw only three of the four, returning from the well. On inquiry with those three, they told her that the fourth one was swimming in the well.

Her statement under Section 164 of the Code of Criminal Procedure has also been recorded. There is somewhat inconsistency between her two statements. On arrest of the applicant and the co-accused, she could identify the applicant and one more person. There is wrong identification of one as well. It is not known as to why the landlady Geetabai did not disclose immediately what she had seen. She knew that the dead body was found in her well. On the same day she did not disclose what she had seen. Be that as it may. These are the *prima-facie* observations.

7. Considering the age of the applicant and the case being based on circumstantial evidence and the circumstance relied upon is in the nature of last seen theory only. On investigation, the chargesheet has been filed. It will take time for commencement of trial and conclusion thereof. This Court is inclined to grant the application. Hence, following order:

ORDER

- (i) The Bail Application is allowed.
- (ii) The applicant be released on bail in connection with Crime No.0279/2022, registered with Jintur Police Station, District Parbhani, for the offence punishable

under Section 302 r/w 34 of the Indian Penal Code, on his executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with surety bond of the like amount.

(iii) The applicant shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

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