

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

BAIL APPLICATION NO. 878 OF 2022

Sunil Mangala Padmere

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. K.N. Shermale, Advocate for applicant
Mr. S.P. Sonpawale, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT, J.
DATE : 26th 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. 92 of 2021 registered with Rajur Police Station, Dist. Ahmednagar for the offences punishable under Sections 302 and 394 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 son of the deceased – Shantabai on 15th June, 2021. It has been averred in the F.I.R. that the informant's mother – Shantabai (deceased) would reside in the village alone. The applicant

herein also hails from the same village. On the intervening night of 14th and 15th June, Shantabai was murdered. On the following morning she was found lying in a pool of blood in her room. The ear-studs and *Dorle* (*mangalsutra*) on her person were found missing. Her left earlobe had suffered grievous injury as the culprit had used force for removal of ear-studs. Name of the applicant has been given in the F.I.R. on suspicion, since he was found roaming around the house of the victim.

4. The crime, thereafter came to be investigated. Charge-sheet has been filed. During investigation, it was found that the applicant has been absconding from village for two days. He came to be arrested on 17th June, 2021. Pursuant to the disclosure statement made by him, both, the ear-studs and *Dorle* alongwith clothes of the applicant having blood stains came to be recovered. Those clothes were sent for chemical analysis. Report of the same indicates the clothes had blood stains of the blood group that of the deceased. There is statement of one Suraj Bande to indicate that sometime before the incident, both, the applicant and he were together at Maruti temple of the village. The applicant was heavily drunk. The applicant told him that the deceased is a witch. She is also rich and he, therefore, wanted to kill her. It is also in the statement of this witness that by 11:00 p.m., the applicant had been to his (witness) residence to place his cell phone for charging and take a battery from him for going to his field. At about 12:00 midnight, the

applicant had again come to the house of the witness to bring his mobile phone back. That time this witness had seen blood stains on the hands of the applicant. The prosecution has also recorded the statement of real sister of the applicant and her husband as well. According to both these witnesses, the applicant had come to their residence and stayed there for two days. During the said period, the applicant had made an extra judicial confession to both of them. Both of them, therefore, had, in turn, informed the police and even brought the applicant to the police station and handed him over.

5. Learned counsel for the applicant would submit that the case is based on circumstantial evidence. The applicant has been behind the bars for about fifteen months. The trial has not yet commenced. At the relevant time, as the applicant was in drunken condition and unable to move on his own, how can he reach the house of the deceased to commit the offence in question. As regards recovery of blood stained clothes are concerned, those were sent for chemical analysis after long. About the statements of sister of the applicant and her husband are concerned, he would submit that according to them the police had visited their residence on the given day and there they came to know about death of Shantabai in the village. Learned counsel meant to say that statements of the sister coupled with her husband are got up to one. Learned counsel also relied on one Apex Court judgment in case of *Balkrishna Tukaram Angre Vs. State of Maharashtra, (2018) All*

MR(Cri.) 1388, to submit that in the case of circumstantial evidence, normally bail is granted. Present case is not based on last seen theory. He would further submit that inquest panchanama has been prepared before the F.I.R. was registered. In support of his submission, he relied on one Apex Court judgment in case of *Ramesh Baburao Devaskar and Ors. Vs. State of Maharashtra, (2008) All MR(Cri.) 293* wherein it has been held that a First Information Report cannot be lodged in a murder case after the inquest has been held.

6. Learned A.P.P would, on the other hand, submit that the offence in question is serious one. The applicant committed murder of an old lady just to satisfy his alcoholism. According to him, the chain of circumstances is complete to point out accessing finger at the accused.

7. Considered the submissions advanced. In the morning of 15th June, 2021, the deceased – Shantabai was found dead in her room. She had suffered a head injury. A blood stained stone was found by her side. Admittedly, the applicant is alcoholic. There is statement of a sixteen years old boy, who claimed to be in the company of the applicant sometime before the incident. It is in his statement that both of them were at Maroti temple in the village. That time the applicant had told him his intention to kill Shantabai (deceased). It is further in his statement that at about 11:00 p.m.,

the applicant had been to his residence. He gave his cell phone for charging and received a battery so as to go to his field. At about 12:00 midnight, the applicant had again come to the house of the witness to get his mobile phone back. That time this boy had seen the applicant's hands having been stained with blood. The applicant also made him extra-judicial confession to have killed Shantabai just sometime before. Then there is a disclosure statement made by the present applicant pursuant to which two ear studs and *Dorle* came to be recovered alongwith his blood stained clothes. In the F.I.R. and in the inquest panchnama, it has been averred that both the ear studs of the deceased were missing. Her left earlobe had suffered grievous injury in an attempt to pull the ear studs.

8. The clothes on the person of the applicant, at the relevant time, were sent for chemical analysis. Report of the same indicates that the clothes have blood stains of blood group 'AB', same as that of the deceased. Although extra-judicial confession is said to be a weak piece of evidence, that is not the only piece of evidence relied upon by the prosecution. The real sister of the applicant and her husband have given statement to the effect that the applicant had come to their residence on 17th June and stayed with them for two days. The applicant had made them extra-judicial confession. It is them, who had informed the same to the police. As per their statements, the applicant was repenting and wanted to surrender to the police.

9. It is true that a communication regarding soliciting presence of two persons to act as panch witnesses to inquest is dated 17th June, while the inquest was conducted on 15th June. It usually happens that services of witnesses are availed and for official purpose the communication is made later on. Unless the officer has an opportunity to explain the same during trial of the case, the same cannot be relied on to grant the applicant bail.

10. The Court is not inclined to grant the application for the following reasons :-

(i) The applicant was not in the village for two days immediately after the incident, meaning thereby he went absconding.

(ii) He made a statement to the witness – Suraj Bande expressing his intention to kill the deceased.

(iii) After having killed the deceased, he had been to the residence of the witness – Suraj Bande, to whom the applicant had made extra-judicial confession. This witness has seen the applicant's hands stained with blood.

(iv) On arrest of the applicant, ear studs and *Dorle* alongwith his blood stained clothes were recovered. C.A. report indicates the clothes of the applicants to have stains of blood group that of the deceased.

(v) The real sister of the applicant has given statement that the applicant had made her extra-judicial confession to have killed the deceased.

11. In view of this Court, this much material is sufficient to indicate applicant's involvement in the offence in question and the Court is, therefore, not inclined to grant him bail. Bail application stands dismissed. The aforesaid observations are prima facie in nature and trial Court shall not be influenced thereby.

(R.G. AVACHAT, J.)

SSD