

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

BAIL APPLICATION NO. 1068 OF 2022

Mahadev @ Baban Achyut Kharate ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

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Mr. S.S. Thombre, Advocate for applicant

Mr. A.V. Deshmukh, A.P.P. for respondent – State

Ms. S.S. Renge, Advocate h/f Mr. K.R. Doke, Advocate for assist to A.P.P.

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 16th SEPTEMBER, 2022
PRONOUNCED ON : 26th SEPTEMBER, 2022

ORDER :

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. 133 of 2021 registered with Yusuf Wadgaon Police Station, Dist. Beed for the offences punishable under Sections 302, 120B and 109 read with Section 34 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 brother of the deceased – Bhimrao. The F.I.R. came to be registered pursuant to direction given by the learned Judicial Magistrate First Class, Kaij under Section 156(3) of the Code of

Criminal Procedure. It has been averred in the F.I.R. that Bhimrao (deceased), brother of the informant, was serving as a driver with M.S.R..T.C., Kalamb Depot. His wife – Radhabai (co-accused) has illicit relationship with the applicant for over 7-8 years. The deceased had, therefore, not been residing with her. He was staying at Kalamb. The deceased had contracted second marriage with Prayagbai. He is blessed with a son of his first marriage. On 29th May, 2021, dead body of the deceased was found in a well. The Assistant Police Inspector of Yusuf Wadgaon Police Station, by joining hands with the applicant, showed it to be a case of suicide. While the dead body was taken out of the well, seven stones were found on the person of the deceased. The deceased was a good swimmer. He was proposing to take voluntary retirement. His first wife – Radhabai thought that the deceased would give all his service benefits to his second wife - Prayagbai. The applicant and Radhabai, therefore, conspired to eliminate Bhimrao. On 25th May, 2021, both of them took the deceased on motorbike to a secluded place, beat him up and dropped in a well. The informant has obtained the C.C.T.V. footage indicating the trio proceeding on a motorbike on the given day. Since thereafter the deceased has not been seen. Some articles belonging to the deceased came to be recovered from the house of Radhabai. She gave an extra judicial confession to her son. On investigation, the charge-sheet came to be filed against the applicant and Radhabai, first wife of the deceased.

4. Learned counsel for the applicant, would submit that the case is based on circumstantial evidence. On investigation, the charge-sheet has been filed. Only last seen theory is not sufficient to keep the applicant behind the bars pending trial. According to him, the deceased had asked the applicant to lend him some amount. The deceased had, therefore, met the applicant. His wife too joined them. The applicant then left the deceased. His dead body was found on 29th May, 2021, i.e. four days after they were together. There is no material to indicate exact time of death of the deceased. As such, there is wide gap between the last seen together and finding of dead body. Learned counsel, therefore, urged for grant of the application.

5. Learned A.P.P. would, on the other hand, urged for rejection of the application on the ground of it being a serious offence. Ms. Renge, learned counsel for the intervenor would, on the other hand, submit that the concerned Assistant Police Inspector was not true to his job. Theory of suicide is doubtful as seven stones were found to have been put under the shirt of the deceased. Belongings of the deceased however, not found on his person. Some of those were recovered from the house of the co-accused. The co-accused had made an extra-judicial confession to her son. A transcript of the telephonic conversation between the son of the deceased and the informant is placed on record. In the C.C.T.V. footage of the given day, i.e. 25th May, 2021, the deceased, the applicant and wife of the deceased were

seen together proceeding on a motorbike. Since thereafter the deceased was not seen. His dead body only found in a well. As such, it is a case strongly indicating the applicant's involvement in the offence in question. The applicant is an influential person. He may tamper with the prosecution evidence. Rejection of the application is, therefore, urged for.

6. Considered the submissions advanced. The case is based on circumstantial evidence. On investigation, the charge-sheet has been filed. It appears that the earlier investigating officer was not true to his job. There is material to indicate that all was not well between the deceased and his first wife – Radhabai (co-accused). The deceased was residing separately. He is said to have contracted second marriage. He was serving as a driver with the M.S.R.T.C. The applicant is alleged to have an extra-marital relationship with Radhabai (first wife of the deceased). So far as regards present applicant is concerned, the material against him is to have been seen alongwith the deceased and co-accused – Radhabai on 25th May, 2021. Thereafter only dead body of the deceased came to be found. The applicant has offered an explanation that the deceased was in his company as he had made demand of Rs.50,000/- from him. True, seven stones were found between the shirt and person of the deceased. There is prima facie nothing to suggest the deceased to have any reason to commit suicide. It might be a case of homicide. The postmortem report is however, silent to give probable time of death of the

deceased. Admittedly, the dead body was found on 29th May, 2021. As such, there is gap of four days between the applicant to have been lastly seen in the company of the deceased and finding of his dead body. It will necessarily take time for commencement and conclusion of trial. In the facts and circumstances of the case, pre-trial detention of the applicant is unwarranted. In the result, the Court is inclined to grant the applicant bail.

7. In view of above, the application deserves to be allowed. Hence I pass the following order :-

ORDER

(I) The bail application is allowed.

(II) The applicant be released on bail, in connection with Crime No. 133 of 2021 registered with Yusuf Wadgaon Police Station, Dist. Beed for the offences punishable under Sections 302, 120B and 109 read with Section 34 of the Indian Penal Code, on executing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety in the like amount.

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

(R.G. AVACHAT, J.)