

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

18 BAIL APPLICATION NO.1393 OF 2021

Kakasaheb s/o Sarjerao Khute
Age: 36 years, Occu.: Agriculture,
Resident of Daregaon, Taluka Khultabad,
Dist.Aurangabad. ..Applicant

VERSUS

The State of Maharashtra
(Through Shiur Police Station,
Tq.Vaijapur, Dist.Aurangabad.) ..Respondent

...
Advocate for Applicant : Shri Nilesh S. Ghanekar
APP for Respondent : Shri G.O.Wattamwar

...
CORAM : M.G.SEWLIKAR, J.

DATE: 14th February, 2022

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for enlargement of the applicant on bail in connection with Crime No.118 of 2021, registered with Shiur Police Station, Vaijapur District Aurangabad, under Sections 302, 201 read with Section 34 of the Indian Penal Code.

2. Prosecution's case in nutshell is that deceased Anna Uttam Jadhav was the brother of the informant Dnyaneshwar Uttam Jadhav. Anna (Since deceased) was a liquor addict. Deceased Anna was a Driver. On 23rd May 2021, informant waited for the

deceased for the dinner but deceased did not turn up. On the next day at 11:15 a.m., the son of the informant showed a photograph on the mobile. The informant found that the said photograph was of the deceased. Therefore, he went to the concerned Police Station and identified the deceased to be his brother Anna. Accordingly, FIR came to be lodged against unknown person.

3. During investigation, it was found that applicant had illicit relations with the wife of the deceased. Therefore, he committed murder of the deceased by strangulation by means of a belt. While committing murder, the belt was broken. One part of the belt was found at the spot and the other part of the belt was recovered at the instance of the applicant from some other place. It was also revealed during investigation that applicant and deceased were travelling on Motorcycle on 23rd May 2021 at 06:00 p.m. and dead body was found on 24th May 2021 at 08:00 a.m. Prosecution has also collected the CDR records indicating that soon before the incident applicant was in touch with the wife of the deceased. Accordingly, charge-sheet came to be filed against the applicant.

4. Heard Shri N.S.Ghanekar, learned counsel for the applicant

and Shri G.O.Wattamwar, learned APP for the respondent-State.

5. Shri Ghanekar, learned counsel for the applicant submits that a broken part of the belt was found at the spot and other broken part of the belt was recovered at the instance of the applicant. He submits that this is a weak evidence to connect the applicant with the offence. He further submits that applicant was seen travelling on the Motorcycle alongwith the deceased. However, time gap is more than 12 hours. Therefore, there was a possibility of any third person coming in contact with the deceased after the applicant parted the company of the deceased. He submits that charge-sheet is filed.

6. Shri Wattamwar, learned APP for the respondent submits that there is CDR record indicating that applicant was in contact with the wife of the deceased. Constant calls made by the applicant to the wife of the deceased indicate that there were illicit relations between the applicant and wife of the deceased. This was the motive for eliminating the deceased. He submits that deceased was last seen in the company of the applicant. Therefore, there is sufficient evidence to show that there is *prima-facie* case against the applicant.

7. The only evidence against the applicant is the broken part of the belt found at the spot and the other broken part of the belt recovered at the instance of the applicant. So far as this evidence is concerned, it is not so clinching as to connect the applicant with the offence. The other evidence is of last seen theory. The applicant was seen in the company of the deceased soon before the death of the deceased. So far as this aspect of the matter is concerned, one witness by name of Atul Jadhav has stated in his statement under Section 161 of the Code of Criminal Procedure that he has seen the applicant and the deceased travelling on Motorcycle on 23rd May 2021 at 06:00 p.m. However, in the statement under Section 164 of the Code of Criminal Procedure he did not say anything about he having seen the deceased in the company of the applicant on 23rd May 2021 at 06:00 p.m. Therefore, last seen theory also does not appear to be so sound as to connect the applicant with the offence. Mere collection of CDR record cannot lead to the inference that the applicant had illicit relations with the wife of the deceased. Prosecution did not record any statement of any witness indicating that applicant had illicit relations with the wife of the deceased. Having considered all these aspects, it cannot be said that there is *prima-facie* case against the applicant. In view of this, I am inclined to release the applicant on bail.

Hence, the order :-

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs.Twenty-five thousand only) with one solvent surety in the like amount in connection with Crime No.118 of 2021, registered with Shiur Police Station, Vaijapur, District Aurangabad, under Sections 302, 201 read with Section 34 of the Indian Penal Code and on condition that he shall not tamper the prosecution evidence and shall attend the Court on the dates fixed during the trial.
- iii) Bail Application is disposed of.
- iv) It is clarified that the observations made in this order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M.G.SEWLIKAR)
JUDGE