

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

936 BAIL APPLICATION NO.1662 OF 2021

1. SHAIKH TAYYAB SHAIKH ISMAIL
2. GAJANAN S/O GANGADHAR WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Kudale Bhagwan S.
APP for Respondents/State : Mr. A.V. Deshmukh
...

CORAM : M.G. SEWLIKAR, J.
DATE : 13th January, 2022

PC.:-

This is an application under Section 439 of the Cr.PC. for releasing the applicants on bail in connection with Crime No.199/2021 registered with Daithana Police Station, District Parbhani under Section 302 read with Section 34 of the I.PC.

2. Informant is the brother of the deceased-Atul Buchale. His dead body was found in pool of blood in the canal. He had injuries on his throat and hand. The informant identified the dead body to be of his brother-Atul Buchale. FIR was lodged against unknown persons.

3. Investigation was taken up. Role of the accused / applicant nos.1 and 2 was discerned. Therefore, charge-sheet came to be filed against the

applicants.

4. I have heard learned counsel Shri Kudale for the applicants and Shri Deshmukh learned APP for the State.

5. Learned counsel Shri Kudale submits that there is no evidence against the applicants. There is only evidence of last seen. Applicant nos.1 and 2 were seen with the deceased prior to the incident. He submits that last seen evidence is a weak type of evidence. He further submits that the blood stained clothes of accused-Prabhakar are recovered from applicant no.1. Applicants have no concern with those clothes. Recovery of cloth of accused-Prabhakar at the instance of applicant no.1 is not believable. He submits that witnesses have not given the description of the applicant nos.1 and 2 to the police at the time of giving their statements. Therefore, their identification has no evidentiary value. He, therefore, prayed for allowing the application.

6. Learned APP Shri Deshmukh submits that applicant nos.1 and 2 were last seen with the deceased. He submits that accused-Prabhakar is in love with one Naushadbi. Deceased-Atul Buchale had spread canards about the said Naushadbi, which was not liked by the accused-Prabhakar. This is the motive behind the commission of the murder. He submits that blood stained clothes are recovered at the instance of applicant no.1. Both the applicants

were identified by the witnesses.

7. Statement of Naushadbi show that she was in love with accused-Prabhakar since their school days. Her statement shows that accused-Prabhakar, deceased-Atul and Naushadbi were in a conference call and deceased had said to accused-Prabhakar that one blackish boy comes to Naushadbi and she charges Rs.500/- for these acts.

8. Statement of Hanuman Shinde shows that he had seen three persons travelling on the motorcycle. One of them was deceased-Atul. He has given description of one person to be a bald person and a fat person. Soon thereafter i.e. within half an hour dead body of deceased-Atul was found. There is statement of witness Dashrath Buchale who has stated that at 1.00 pm on 13th August, 2021 three persons had come to him they inquired about deceased-Atul. Dashrath Buchale called on the phone of deceased-Atul and told him that three persons from Gangakhed were trying to meet him. Atul spoke on the phone of Dashrath Buchale with those three unknown persons.

9. Dashrath Buchale has identified those three unknown persons as accused-Prabhakar, applicant nos.1 and 2. Similarly, witness Hanuman Shinde has also identified applicant nos.1 and 2 to be the persons with whom he had seen the deceased traveling on motorcycle. Soon thereafter deceased was

found dead. These sequence of events clearly point to the accused to be the perpetrators of the crime. It is true that last seen theory is a weak type of evidence. In the case of **Surajdeo Mahto & Anr. V/s. State of Bihar** reported in **2021 (6) Mh.L.J. (Cri.) 471**, it has been held as under:

“.....Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine.”

10. In the case at hand the deceased was in company of applicant nos.1 and 2 and soon thereafter deceased was found dead. The applicants have not offered any explanation in this regard. In addition to this, there is recovery which corroborates involvement of the applicants in this offence.

From the injuries on person of the deceased, it can be easily made out that it is a homicidal heath.

11. At the instance of accused-Prabhakar a knife stained with blood has been recovered. At the instance of applicant no.1 Shaikh Tayyab clothes of accused-Prabhakar stained with blood have been recovered. At the instance of applicant no.2-Gajanan the spot where the clothes were thrown is discovered. Considering all this evidence, there is *prima facie* case against the applicants. Therefore, I am not inclined to release the applicants on bail. Hence, the application is dismissed. Trial Court to expedite the trial.

12. These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]