

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

946 BAIL APPLICATION NO.2008 OF 2022

MEHFOOJ KHA S/O. MEHBOOB KHA PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. N. S. Ghanekar, Mr. Ghate Sagar
Somnath.

APP for Respondent-State : Mr. A. A. Jagatkar.

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CORAM : S. G. MEHARE, J.

DATE : 13.12.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State at length.

2. The applicant and the deceased were co-brothers. It has been alleged against the applicant that he had invited the deceased for dinner at his home. The deceased left for the house of the applicant after informing his father that he was going for dinner at the house of the applicant. The spot of the incident was the house of the applicant, which was vacant and nobody was living there. The dead body was found 100 meters away from the said house. The prosecution has evidence of blood and drag marks between the house of the applicant and the place where the dead body was found. The prosecution has

recovered the articles belonging to the deceased like wallet and mobile handset cover.

3. Learned counsel for the applicant would submit that since the deceased told his father that he is going for dinner to the house of the applicant, a suspicion has been raised and motive has been concocted. The applicant has no reason to kill his co-brother for Rs.1,50,000/-, which was as allegedly, the applicant borrowed from the deceased. The applicant was arrested next day of the incident. He did not flee away. The recovery of the incriminating evidence from the applicant is done forcefully and concocted. The prosecution has no strong evidence except the smelling dog. It is unreliable evidence. It is an evidence like an expert. Hence, it cannot be a ground to believe the prosecution case. The prosecution has no evidence of last seen together. The investigation has been completed and the charge sheet has been filed. So far as the CDRs are concerned, there was a single tower in the village. Hence, it may not be good a evidence. That apart, the last call between the deceased and the accused was at 7.00 p.m. Hence, he may be granted bail.

4. Learned APP has strongly opposed the application. He would argue that the strong circumstantial evidence has been collected against the applicant. The blood stained weapon, his

shirt, the property of deceased was recovered at his instance under Section 27 of the Evidence Act. The blood and dragging marks were seen from the house of the applicant till the place where the dead body was found. The offence is serious. There is every possibility of tampering with the prosecution witnesses as the applicant and witnesses are residents of same village. Hence, he may not be granted bail.

5. The facts discussed above reveals that except the circumstantial evidence of lying the dead body at some distance from the house of the applicant and recovering the blood stained clothes and alleged weapon, the prosecution has no other evidence. Circumstantial evidence is a weak piece of evidence. The prosecution has to prove the chain of circumstances to believe the prosecution case. The motive also does not inspire the confidence. The investigation has been completed. There are no antecedents to the discredit of the applicant.

6. Considering the material collected against the applicant and the allegations levelled against accused, this Court is of the view that his further detention would serve no purpose. However, the apprehension of the prosecution may be guarded by imposing certain conditions. Hence, the following order :

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **MEHFOOJ KHA S/O. MEHBOOB KHA PATHAN** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.56 of 2022, registered by Police Station Kannad Rural, District Aurangabad, for the offences punishable under Sections 302, 201 read with Section 34 of the IPC, on the conditions not to contact any of the relatives of the deceased and witnesses, not to tamper with the prosecution evidence till conclusion of the trial. He shall co-operate with the trial.

(S. G. MEHARE, J.)

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vmk/-