

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

**923 BAIL APPLICATION NO.1290 OF 2021
WITH
CRIMINAL APPLICATION NO.173 OF 2022
WITH
CRIMINAL APPLICATION NO.3302 OF 2021
KAILAS MAROTRAO CHILTEWAR
VERSUS
THE STATE OF MAHARASHTRA**

...

Shri. Dhananjay M.Shinde, Advocate for applicant
Shri. Pramod A.Pisal, Advocate for applicant (in Cri.Appln No.173/22)
Shri. R.K. Ingole, Advocate for applicant (in Cri.Appln No.3302/21)
Shri. G.O. Wattamwar, APP for Respondent-State

...

CORAM : M.G. SEWLIKAR, J.

DATE : 01st FEBRUARY 2022

PER COURT :

1. This is an application under Section 439 of Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No.0157/2021 registered with Akhada Balapur Police Station, Dist. Hingoli for the offences punishable under Sections 302, 201 and 120(B) read with 34 of the Indian Penal Code.

2. Briefly stated, facts of the prosecution case are that the informant and the deceased were friends. Deceased Manikrao Rajaram Rajegore was the resident of village Kaladgaon, Tq. Ardhapur Dist. Nanded. The deceased had once expressed to the informant that the wife of the applicant had been attracted to the deceased. The deceased felt that the wife of the applicant had infatuation towards

him. The deceased had also said that if the applicant got to know about it, the applicant would get annoyed. The deceased was using Skoda Car bearing registration No.MH-14 DC-7075. The deceased was also cousin of the informant. On 3rd June 2021 at 7.30 to 8.00 pm, the deceased had come to Basmat Phata in the Skoda Car bearing registration No.MH-14 DC-7075. The deceased was about to sit in the car. At that time, the informant called him. However, the deceased did not hear it. When the informant carefully saw as to who was sitting in the Car, he found that the applicant was at the steering wheel of the said Skoda Car. He called out both of them but they did not listen. Both of them left for Basmat Phata via Hingoli Phata.

3. It is further alleged in the FIR that on the next day i.e. on 4th June 2021 at 5.00 to 6.00 pm, the informant came to know that the car of the deceased had met with an accident and the deceased lost his life in the said accident. He found the deceased sitting at the steering wheel with legs flexed. There was some petrol in the plastic water bottle. There was a ligature mark on the neck of the deceased. He suspected that the deceased might have been killed by strangulation. Accordingly, the FIR came to be lodged on 5th June 2021 at 5.48 pm.

4. Heard Shri. Shinde, learned Counsel for the applicant, Shri. Wattamwar, learned APP for the respondent-State and Shri. Pisal and Ingole, learned Counsel assisting APP

5. Shri. Shinde, learned Counsel for the applicant submits that the informant is the relative of the deceased. The informant has a grudge against the applicant, as the applicant and the informant were the members of *bheeshi* and some amount was due from the informant to the applicant. The applicant was demanding the said amount from the informant. To deter the applicant from making such demand, the applicant has been falsely implicated in this case. He further submits that the informant was in *Basmat Phata* at the time of the incident. He had called out the deceased. But the deceased did not hear it, which means the deceased was not within the hearing distance. Naturally, it is highly impossible for the informant to be able to see, who was sitting in the car at the steering wheel. He submits that the CCTV footage does not indicate that the applicant was sitting at the steering wheel. It simply shows that one person is sitting at the steering wheel. The deceased was found standing outside the car. He submits that the photographs produced by the prosecution do not give a clear picture so as to be able to identify as to who was sitting at the steering wheel. He further submits that this rules out the last seen theory. He further

submits that the recovery of the burnt clothes allegedly at the instance of the applicant also does not have any evidentiary value. It shows that burnt cloths and shirt of applicant were from co-accused Narayan Shevalkar. The memorandum panchanama shows that within half an hour, they reached Akhada Balapur Police Station from village Ghogari, which is almost 60 km from village Ghogari. He submits that the informant was present at the time of drawing of spot panchanama. However, he did not mention that he had seen the informant and the deceased together in the car and driving towards the Basmat Phata via Hingoli road. He submits that if the informant had really seen the deceased and the applicant together, he would have mentioned it to the Police at the time of drawing the panchanama. He submits that there is inordinate delay of 18 hours in lodging the FIR for which explanation is not given.

6. Learned APP and both the learned Counsel assisting APP submit that CCTV footages clearly show that the deceased was standing beside the car. One person was sitting at the steering wheel. His face is not clear. They submit that there are statements of witnesses, who have stated that they had seen the deceased and the applicant. They submit that there are statements of witnesses, which show that the deceased had explained to them that he was going for dinner with the applicant. They submit that there is CDR and SDR report indicating

that the tower location of the deceased and the applicant was the same at the relevant time i.e. of Basmat Phata. They submit that under Section 27 of the Evidence Act, memorandum was prepared. Initially, the statement of co-accused Narayan was drawn. Thereafter, statement of applicant under Section 27 of the Evidence Act was drawn and thereafter, recovery was effected and therefore, it appears that there is a gap of only 10 minutes in the recovery. They submit that in the panchanama, it is mentioned that spot of the panchanama as Ghogari and Akhada Balapur as the police reached Akhada Balapur after preparation of panchanama and therefore, Akhada Balapur appears in the recovery panchanama drawn under Section 27 of the Evidence Act.

7. Charge-sheet is filed. Post Mortem report shows that the cause of death was ligature strangulation. It further shows that the deceased had burns over scalp, both parietal region with Singeing of scalp hairs present. They show that the deceased died of strangulation. Thereafter, he was set on fire. CCTV footage is seen. Initially, it is seen that the deceased was standing beside the car. Some one is seen sitting at the steering wheel. The applicant has stated that the informant had seen the deceased sitting in the car. Simply because the deceased did not hear the calls of the informant does not mean that he

was not within the hearing distance. It is pertinent to note that the applicant had an axe to grind against the deceased. The FIR shows that the deceased had expressed that the wife of the applicant had developed infatuation towards the deceased. Nothing is brought on record to show that the deceased had any animosity with anyone other than the applicant. The delay might have been caused in lodging the report as the dead body was sent for post mortem. Thereafter, the report was lodged. His submission that while drawing the spot panchanama, the informant did not mention the name of the applicant is stated to be rejected because the purpose of spot panchanama is to collect evidence obtained at the spot. Just because the informant did not mention the name of the applicant at the time of spot panchanama cannot be a circumstance adverse to the prosecution. At this stage, it appears that there is *prima facie* case against the applicant. The time gap between the last seen theory and finding of the dead body is less than 12 hours. There is no possibility of anyone coming in contact with the deceased other than the applicant. No explanation is coming forth from the accused as to how he parted with the company of the deceased. In view of this matter, I am not inclined to grant bail to the applicant. Hence, following order is passed.

ORDER

- (i) Application is dismissed.
- (ii) Criminal Application Nos.173 of 2022 and 3302 of 2021 for assist to APP are disposed off.
- (iii) 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 the trial.

[M.G. SEWLIKAR, J.]

sarowar