

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
BAIL APPLICATION NO.1112 OF 2022**

**Akshay Suresh Shinde** ]

Aged 21 years, Occupation : Student ]

Lonarwadi, Devi Mandir Road, Tq. Sinnar ]

Dist. Nashik, ]

Presently lodged in Nashik Central Jail ] Applicant/Accused

Vs.

1. The State of Maharashtra (Through ]  
the Office of Public Prosecutor) ]

2. The Senior Inspector of Police, ]  
Sinnar Police Station, Dist. Nashik. ] Respondents

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Mr. S.T. Pandey a/w Mr. Arvind Singh, Mr. Nagesh Avhad, Ms. Angela Singha and Ms. Anima Mishra i/b SBG Law Advocates, for Applicant.

Ms. S.S. Kaushik, A.P P, for Respondent-State.

Mr. Sudarshan Abari, P.S.I, Sinner Police Station.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.**

**RESERVED ON : 27th JULY, 2022.**

**PRONOUNCED ON: 29th JULY, 2022.**

**P.C.**

1. By this application, the applicant seeks his enlargement on bail in connection with Crime No. I - 1048 of 2021 registered with *Sinnar* Police Station, District *Nashik*.

2. The applicant is a student of College aged about 21 years. He has been charge-sheeted by *Nashik* Rural Police Station for the offence punishable under section 302 of the Indian Penal Code.

3. Prosecution story goes as under;

Santu Maruti Pawar, who is the first informant and brother of deceased Hirabai has lodged an F.I.R on 9th August, 2021. Two years after the marriage of Hirabai, there was a divorce and thereafter she started residing with her mother at *Lonarwadi, Sinnar*. After her mother's death somewhere in the year 2004-2005, Hirabai started residing alone.

4. On 6th August, 2021, deceased Hirabai left her house around 4.00 p.m. On 8th August, 2021, first informant had received a phone call from his grandson Sandip Pawar at around 3.00 p.m who informed him that when he visited house of the deceased, it was found locked from outside and foul smell was coming from her house. Having learnt about the same, the first informant rushed to the house of Hirabai with his wife only to notice body of the deceased lying on the floor covered with a mattress and insects flying over her body. The first informant immediately approached the Police who arrived on the spot and broke open the lock. Hirabai was found dead. The dead body was sent to Civil Hospital, *Nashik* for postmortem.

5. The prosecution alleges that motive behind the offence of murder of the deceased was that the applicant had an impression that due to illicit relations of the deceased with several persons, prospectus of his sister's marriage are in jeopardy.

6. After the arrest of the applicant on suspicion, a key of the lock of the house of the deceased was discovered at the instance of the applicant under section 27 of the Indian Evidence Act. As a result of the investigation, Investigating Officer laid a charge-sheet against the applicant in the Court of Judicial Magistrate First Class, *Sinnar*, District *Nashik*.

7. The learned Additional Sessions Judge, by an order dated 27th November, 2021 rejected the first application for bail under section 439 of the Code of Criminal Procedure and, therefore, the applicant has approached this Court with a similar prayer.

8. I heard Mr. Pandey, learned Counsel for the applicant.

9. Mr. Pandey would argue that this is a case based on circumstantial evidence and the prosecution has arrested the applicant only on suspicion. He would argue that the First Information Report was initially against an unknown person. There can hardly be any motive attributable to the applicant *qua* murder of the deceased, who was his distant aunt, in light of the fact that his relations with the deceased were cordial. He would argue that looking to the tender age of the applicant, who is prosecuting his studies, his future would be jeopardize if he is allowed to be in the company of harden criminals in the jail which would affect his future.

10. Counsel would further urge to release the applicant as there is absolutely no chance of he fleeing away from the justice as he has roots in the society and even the nature of evidence is not clinching.

11. On the other hand, learned A.P.P while opposing release of the applicant submitted that offence is grave. The applicant had committed murder of the deceased after a well hatched plan with the co-accused by keeping a watch on the deceased and, thereafter committed her murder. Learned A.P.P has also expressed her apprehension that in case of his release, the applicant might abscond and would not be available for trial.

12. Indubitably, charge-sheet has been filed and, therefore, nothing is to be recovered at the instance of the applicant. He is a boy of 21 years age prosecuting his studies. There are no antecedents, much less any antecedent of the similar nature brought to the notice of this Court by the prosecution. It is equally true that this being a fresh matter, possibility of trial getting concluded in the near future is very bleak and, therefore, *prima facie*, it cannot be said to be an open and shut case. It also cannot be lost sight that by continuing detention of the applicant in jail would expose him to come in contact with the harden criminals which might jeopardize his future.

13. Section 439 gives an unfettered discretion to this Court to admit an accused person to bail, albeit, discretion is to be exercised judicially. The crucial aspect, at this stage, is to ensure presence of the applicant during trial as well as to ensure that he does not abscond, in case of his release. It has been well settled that bail is a rule and jail is an exception. Looking to the age of the applicant, it seems incredible that he would be in a position to influence the witnesses, who are yet to be examined.

14. As such, having taken into consideration, nature of the offence, overall circumstances, status of the applicant in the society and the fact that there is no eye witness to the incident, I am inclined to admit the applicant to bail in view of the following order;

[a] The applicant be enlarged on bail on executing a PR bond in the sum of Rs.30,000/- with one surety in the like amount to the satisfaction of the Sessions Court;

[b] The applicant shall not leave jurisdiction of the Sessions Court, *Nashik* without seeking prior permission of the concerned Court;

[c] The applicant shall not make any attempt to influence any of the prosecution witnesses or tamper the evidence;

[d] The applicant shall furnish his permanent residential address and cell number to the trial court as well as to the Investigating Officer;

[e] The applicant shall appear before the trial Court scrupulously on each of the dates.

15. Application stands disposed of.

**[PRITHVIRAJ K. CHAVAN, J.]**