

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Criminal Application (BA) No. 976 of 2022

Pawan S/o Shriram Mangam

Versus

State of Maharashtra, through Police Station Officer, Police Station,
Mahagaon, Tq. Mahagaon, Dist. Yavatmal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Anil Mardikar, Senior Advocate assisted by
Shri Digvijay S. Rangilal, Advocate for the applicant.
Shri T.A. Mirza, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 25th August, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 110 of 2021 registered with Police Station Yavatmal for the offence punishable under Sections 302 of the Indian Penal Code.

2. Shri Anil Mardikar, learned Senior Advocate for the applicant submits that the whole case is based on circumstantial evidence that is last seen theory. He submits that there are many discrepancies in investigation, like the applicant was arrested on 19th March, 2021 at 9.57 am whereas, the cloths having

blood stains were seized on the same day at 17.32 hours and the discovery under Section 27 of Indian Evidence Act is on 21st March, 2021. He, therefore, submits that it creates doubt about the veracity of such evidence.

3. He further submits that in the above referred backdrop, if the status of the trial is considered, yet the charge is not framed and there is no likelihood that in near future the trial would commence.

4. He further submits that the scissor which is shown to have recovered from the applicant, is easily available everywhere. Thus, the evidence collected by the Investigating Officer is not sufficient to show the involvement of the applicant in the alleged offence and therefore according to him there is every possibility of the applicant being acquitted. Accordingly, he prays for grant of bail.

5. On the other hand, learned Additional Public Prosecutor strongly opposed the application and submits that the statement of complainant and one more witness who have seen the deceased going in a car with the applicant and since immediately thereafter dead body of the deceased was found, the said evidence is sufficient to show the involvement of the applicant in the alleged offence.

6. He further submits that the seizure of the cloths with blood stains and recovery of scissor is further sufficient to connect the applicant with the alleged offence. Thus, he prays for rejection of the present application.

7. I have perused the chargesheet and the applicant.

8. This case is wholly based on circumstantial evidence that is last seen theory.

9. It is alleged that the applicant used to make regular demand of money from the deceased and on the faithful day when the demand was not fulfilled by the deceased, he committed murder of the deceased.

10. In support of last seen theory, the prosecution is relying upon the statement of the complainant and one more witness. However, *prima facie*, there are discrepancies in seizure of cloths of the deceased and also recovery of weapon.

11. Thus, considering the fact that the whole case is based on circumstantial evidence and there is no direct evidence to connect the applicant with the alleged offence, I am of the opinion that as the investigation is completed and the chargesheet has been filed, on certain stringent condition the applicant should be released on bail. Accordingly, I pass the following order.

- i. Criminal application is allowed;
- ii. It is directed that the applicants shall be released on bail in Crime No. 110 of 2021 registered with Police Station Yavatmal for the offence punishable under Sections 302 of the Indian Penal Code, on furnishing P.R.Bond of Rs.25,000/- with a solvent surety in the like amount.
- iii. The applicant shall not enter the territorial jurisdiction of Yavatmal City till culmination of the trial, except for the trial.
- iv. The applicant shall provide his address and name of Police Station, which he shall attend on 1st and 16th of each month between 10 am to 12 noon till culmination of trial.
- v. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not to tamper with the evidence;
- vi. State is at liberty to apply for cancellation of bail, in case the applicants commits similar offence or breach the condition.

SACHINDANAND
K NAIR

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by
SACHINDANAND
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Date: 2022.08.26
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[ANIL S. KILOR, J.]