

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

916 BAIL APPLICATION NO.231 OF 2021

VIKAS FAKIRA RANDHIR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Shermale K. N.
APP for Respondent-State : Mr. K. S. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 01.08.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant, who is the son of the deceased is claiming bail in Crime No.I-112 of 2017, registered with Shirdi Police Station, District Ahmednagar, for the offences punishable under Sections 302, 201, 120-B read with Section 34 of the IPC.
3. The prosecution case in brief is that the deceased father was not willing to partition the land. Hence, the applicant and his brothers were harassing him. The deceased was residing in the plot, where the co-accused Madhukar was residing. The deceased had lodged the reports complaining against his sons

for harassing him for handing over the land to them. A suit for partition was pending. Since, the deceased was not willing to partition the land, both accused with common intention plotted a conspiracy and strangled the father. They posed that the deceased died of the heart attack. The first informant, the sister of the applicant came. She shifted the dead body in ambulance and then it was transpired that the deceased was strangled and beaten mercilessly. The prosecution had the statement of the wives of the accused and the relatives establishing that the accused were forcing the deceased to partition the land and when he was opposing, they were quarreling with him.

4. Learned counsel for the applicant would submit that there were no complaints against the applicant, who was residing at Pune. However, on the day or before the day of the incident, he was at Talegaon at his father-in-law's home. The said village was 10 k.m. away from village Ranjangaon. The statements of the accused were recorded under Section 161 of the Cr.P.C. The police have recovered the incriminating articles like sticks and cotton string jointly. Hence, such recovery under Section 27 of the Indian Evidence Act is inadmissible. The first informant initially intimated the Police Station about

the death. However, she immediately removed the dead body and took it to the hospital. There was no appropriate inquest panchnama. The statements of the wives of the accused have been recorded prior to the registration of the crime. Whatever the inquest was prepared, it was prepared before the FIR. Recent view of the Hon'ble Supreme Court is howsoever the suspicion is strong, it cannot take the place of proof and therefore, the accused cannot be convicted. The applicant was granted Covid-19 pandemic bail. However, he recently surrendered suo motu. During his bail, he neither violated the law nor misused the bail and also did not threaten any witness. Apparently, there was enmity between the first informant and the accused. The first informant, who was the sister has also the interest in the property. Therefore, she has made the false allegations against the applicant. There is no strong circumstantial evidence against the applicant. Hence, he may be granted bail.

5. Per contra, learned APP would submit that the wives of the accused have categorically stated that the applicant and the co-accused were present on the day of the alleged incident. They were forcing the deceased to hand over them their shares. When he denied, the accused strangled and

assaulted the deceased. The suit for partition was already pending. However, the accused were forcing the deceased to hand over them their shares. The interest in the property of the deceased was the motive behind the crime. The cotton string used to strangle was blood stained. Since the offence was committed jointly, both accused were knowing where the incriminating articles were concealed. The statement of the witnesses *prima facie* establish the presence of the accused in the house on the day of the incident. The offence is serious. Hence, he may not be granted bail.

6. What would be the effect of the joint recovery panchnama under Section 27, is a matter of merit. However, the facts remain that the deceased was found dead in the house. The statements of the wives of the accused are specifying the roles attributed by the accused. Their evidence is direct, involving the accused in committing the murder of the father. The circumstantial evidence by way of recovery of cotton wire has been collected by the Investigating Officer. The statement of the relative of the deceased reveals that the relation between the deceased and the accused were not good. They were forcing him for partition. Since the applicant had got the break in his job on the day of the incident, he was in

the village. They pretended that the deceased died of the heart attack. Their silence and trying to conceal the crime is the another circumstance against them. Admittedly, the deceased was living on the same plot. The material is also available on record that on the day of incident, the applicant was residing with his brother Madhukar in his house. Considering the material collected by the Investigating Officer in toto, the Court is of the view that *prima facie* material is available against the applicant. The offence is grave. Father has been killed for the property. They may also cause harm the sisters, who are fighting for justice for the murder of their father.

7. For the above reasons, bail application stands dismissed.

8. Needless to say that the observations are restricted to this bail application only.

(S. G. MEHARE, J.)

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