

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

**APPLICATION FOR CANCELLATION OF BAIL NO.95 OF  
2023**

SURESH HARI SHETI  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. P. B. Patil h/f Mr. P. H. Patil, Advocate for the Applicant.  
Mrs. P. V. Diggikar, APP for Respondents-State.  
Mrs. A. N. Ansari, Advocate for Respondent Nos.2 and 3.

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**CORAM : S. G. CHAPALGAONKAR, J.  
DATED : 18<sup>th</sup> OCTOBER, 2023.**

**PER COURT:-**

1. The applicant/informant impugns the order dated 03.05.2023 passed in Session Case No.43/2023, thereby releasing respondent nos.2 and 3 on bail.

2. Mr. Patil, learned Advocate appearing for the applicant submits that the learned Sessions Judge failed to consider the clinching evidence depicting the complicity of the applicant in commission of murder. He would submit that during the course of investigation the knife i.e. weapon of the offence used in commission of murder has been recovered under memorandum of panchanama under Section 27 of the Evidence Act. He would further point out that the shopkeeper has given statement that the accused persons had purchased knife from him. According to him, the aforesaid evidence is sufficient to show that the respondents have brutally murdered the son of the informant. He would further submit that the affidavit was filed by the applicant before the Sessions Court to oppose the plea of the bail raised on behalf of the respondents. It is specifically

brought on record that accused no.1 had quarreled with the deceased, as he was suspecting illicit relations between his wife and the deceased. He would further submit that on 10.12.2022 and 12.12.2022, the accused persons had threatened the deceased. Therefore, he submits that there was sufficient motive to commit murder.

3. Mrs. Ansari, learned Advocate appearing for the respondents/accused would submit that the learned Sessions Judge after considering the parameters for grant of bail, passed the impugned order. She would submit that the learned Sessions Judge has scanned the entire evidence available in the charge-sheet and found that the recovery under Section 27 of the Evidence Act itself is not sufficient to complete the chain of circumstances or to pin point guilt against the respondents. The test identification parade is not conducted. The identification by the Shyam Sonawane is not sufficient and admissible in evidence. As such, she supports the impugned order.

4. Pertinently, the investigation was set in motion on the basis of the information given by the present applicant stating that his son namely Pramod @ Bhushan was missing, however, he did not return back. On 12.12.2022, the dead body of the deceased found in Nimkhedi Shivar near Girna River Railway Bridge. The respondent nos.2 and 3 were arrested on suspicion. The investigation was carried and charge-sheet was filed. Thereafter, respondents had moved application for grant of bail before the Sessions Judge, who directed release of respondent nos.2 and 3 vide order dated 03.05.2023. The Sessions Judge observed that the deceased was missing since 10.12.2022. The missing report was lodged with the Police Station MIDC, Jalgaon without attribution regarding suspicion against the accused persons. The

dead body found on 12.12.2022. Thereafter, the complaint is lodged alleging enmity between the deceased and the accused persons. It is also observed that, the charge-sheet contents the evidence indicating purchase of knife by the accused persons from the Shyam Sonawane and secondly, so called recovery under Section 27 of the Evidence Act. The Sessions Judge has observed that the recovery under Section 27 of the Evidence Act may be one of the factor to establish guilt, however, it cannot be taken as conclusive proof.

5. The observations of the Sessions Court appear to be in tune with the material in the charge-sheet, so also legal position regarding appreciation of the evidence in the cases of circumstantial evidence. It is trite that, the recovery of the weapon itself is not evidence, by which the charge under Section 302 of the Indian Penal Code can be established against the accused of commission of murder. There must be other circumstances in the nature of clinching evidence, by which any hypothesis that goes in favour of the innocence of the accused can be eliminated. In the facts of the present case, the Sessions Judge found that the requisite evidence is not available on the record of the charge-sheet. In this background, the exercise of discretion while granting bail in favour of the accused/respondent nos.2 and 3 cannot be faulted. Hence, no case is made out to cause interference in the impugned order. Hence, the application is rejected.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**