

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

929 BAIL APPLICATION NO.1171 OF 2023

SAINATH SHANKARRAO PAWAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Deshmukh Umakant B.
APP for Respondent : Ms. PV. Diggikar

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: August 22, 2023

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PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.8 of 2023 registered with Naigaon (Bz) Police Station, Tq. Naigaon, Dist. Nanded for the offence punishable under section 302, 201 r/w 34 of Indian Penal Code.

2. On a complaint of one Shiva Kadam initially an offence under section 307 was registered with police station Naigaon (Bazar), District Nanded against unknown accused persons. Subsequently, on death of injured offence under section 302, 201 r.w. 34 of IPC is added. The prosecution relies upon three circumstances in the charge-sheet filed against the applicant/accused. Firstly, there is recovery of mobile cell phone of the deceased at the instance of the applicant. Such recovery is shown to be under section 27 of the Evidence Act. Secondly, the recovery of the clothes. Lastly, CCTV footage in which the applicant and co-accused alleged to have seen in the company of deceased on motorcycle. As such, theory of last seen is sought to be put forth. Certificate u/s 65-B of the

aaa/-

Evidence Act is produced. It is alleged that deceased had illicit relations with the mother of the applicant and, therefore, he has committed murder.

3. Mr. Deshmukh, learned advocate appearing for the applicant would submit that the Sessions Court has granted bail to the co-accused, who was seen on the motorcycle in the CCTV footage. He would submit that so far as motive is concerned, there is absolutely no evidence. In a case of circumstantial evidence, motive plays an important role. He would submit that alleged recovery under section 27 of the Evidence Act is from place which is accessible to general public and does not constitute discovery within the meaning of section 27 of the Evidence Act.

4. Learned A.P.P. strongly resists the application. She would submit that CCTV footage shows deceased in the company of the applicant and co-accused while proceeding on the motorcycle. The applicant could not explain recovery of mobile phone of deceased at his instance under section 27 of the Act. There is strong evidence against the applicant. She would further submit that CCTV footage is impeccable evidence against accused. The applicant may not be released on bail.

5. Having considered the submissions advanced, apparently, there is nothing to indicate the motive behind commission of the offence. The allegation regarding motive does not find support in the charge-sheet. Reliance of the

prosecution on CCTV footage may establish presence of the accused alongwith the deceased on the motorcycle prior to his death that may constitute theory of last seen. However, to complete further chain of circumstances, the evidence relied upon by the prosecution fall short. Whether recovery under section 27 is acceptable or not would be the subject matter of trial. Since investigation is over and charge-sheet is filed, further detention of the applicant would not be necessary. The trial would take its own time. There are no criminal antecedents. Hence, the applicant can be enlarged on bail subject to certain conditions. Hence, the following order.

O R D E R

- i. Application is hereby allowed.
- ii. The applicant Sainath s/o Shankarrao Pawar in connection with Crime No.8 Of 2023 registered with Naigaon (Bz) Police Station, Tq. Naigaon, District Nanded for the offence punishable under sections 302, 201 r/w 34 of Indian Penal Code be released on bail on furnishing P.R. and S.B. of Rs.25,000/-(Rs. Twenty Five Thousand) on the following conditions.
 - a] The applicant shall not tamper with the prosecution evidence, in any manner.
 - b] The applicant shall attend the trial.
- iii. Bail application is accordingly disposed off.

(S.G.CHAPALGAONKAR J.)

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