

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

BAIL APPLICATION NO.1418 OF 2023

Mohsin Khan s/o Harun Khan Pathan
Age: 26 years, Occu. Mechanic,
R/o: Mr. Dongarkada, Tq. Kalmanuri,
District: Hingoli

... Applicant

Versus

The State of Maharashtra

... Respondent

...

Mr. P. P. Giri, Advocate for the Applicant
Mrs. P. V. Diggikar, APP for the respondent/State

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 25th August, 2023.

PER COURT:-

1. Heard learned Advocate for the applicant and learned APP for the State.
2. The applicant is seeking bail in Crime No.172/2023 registered with Akhada Balapur, Police Station, District Hingoli for the offences punishable under Sections 302, 364, 120(B), 201 and read with Section 34 of the Indian Penal Code.
3. The investigation was set in motion on the complaint of one Yasmeen Shaikh, who informed that on 28/02/2023, her brother [deceased] left the house at about 7:30 pm. However, he did not return to home. On 01/03/2023, he was found in injured condition

having the marks of strangulation around his neck and assault. It is alleged that the wife of deceased - Fulma had extra-marital relations with the applicant - accused. Therefore, her brother is murdered. In pursuance of the aforesaid information and on registration of FIR, the investigation was carried. During the course of investigation, the applicant and accused no.2 along with other accused, namely, Shailesh and Gopal were arrested. Except the applicant, other accused persons are enlarged on bail. On completion of investigation, charge-sheet is filed. The prayer of the applicant for grant of bail has been negatived by the learned Sessions Judge vide order dated 14/07/2023.

4. Mr. Prashant Giri, learned Advocate appearing for the applicant submits that case of the prosecution is based on circumstantial evidence. However, taking the contents of charge-sheet as it is, the chain of circumstance to bring home guilt of the accused cannot be established. He would submit that there is nothing to indicate motive against the applicant. The theory of last seen is based on the statement of one Syed Ameenuddin. However, careful consideration of his statement would show that he has given a made-up story. Further, his statement is recorded after ten (10) days of recovery of dead body of the deceased. He would submit that although it is claimed that there is recovery under Section 27 of the Act, it does not constitute incriminating circumstance. The recovery of clothes are of no significance. The co-accused are already enlarged of bail. The charge-sheet is filed and further detention of the applicant is not necessary. The applicant would abide by the condition as imposed.

5. The learned APP opposes the prayers. She would contend that the applicant had illicit relation with wife of the deceased. In a previous incident, the applicant and others were seen beating the deceased. The said incident is video graphed. She would further submit that there is recovery of incriminating article like shock-up rod and clothes at the instance of the applicant. The release of other accused has no consequence for the purpose of considering the prayers in the present application since role attributed to the applicant/accused is different. She would further submit that release of applicant may obstruct smooth trial. Hence, she urge to reject the prayers.

6. The perusal of the FIR would show that the sister of deceased lodged the complaint on suspicion that accused no.1 has illicit relationship with the applicant. As such, accused had animus against the deceased. Except such statement of the informant, there is nothing to indicate the alleged illicit relationship of accused no.1 with the applicant. Secondly, the theory of last seen sought to be put-forth is introduced on the basis of statement of Syed Aminoddin, which is recorded after ten (10) days of the death of deceased. Further, the presence of applicant with the deceased is stated to have noted by the witness at night hours in running vehicle which appears to be doubtful. The recovery of clothes and shock-up rod, prima facie, appears to be insignificant since there is no connecting evidence to show use of those articles in commission of crime. Prima facie, the case of prosecution is based on weak evidence. Further, the other accused persons are already released on bail. The applicant is behind the bars since

01/03/2023. The trial would take its own time. In that view of the matter, the case is made out for grant of bail subject to certain conditions. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, namely, Mohsin Khan Harun Khan Pathan be released on bail in Crime No.172/2023 registered with Akhada Balapur, Police Station, District Hingoli for the offences punishable under Sections 302, 364, 120(B), 201 and read with Section 34 of IPC on furnishing P.B. of Rs.50,000/- (Rupees Fifty Thousand Only) with one solvent surety of the like amount to the satisfaction of the trial court on the following conditions:
 - a) The applicant shall attend the proceedings before the trial court on given dates.
 - b) The applicant shall not leave the State of Maharashtra without express permission from the trial court.
 - c) The applicant shall not directly or indirectly induce, threat or promise to any person acquainted with the facts of this case so as to dissuade him/her from disclosing the facts to the court or any police officer.
 - d) The applicant shall not tamper with the evidence.
 - e) The applicant shall not indulge in any criminal activities.
 - f) The applicant shall not establish communication with any witness.

g) The applicant shall furnish his contact number, residential address to the Investigating Officer and shall keep him updated.

(iii) Bail Application is disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer