

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

928 BAIL APPLICATION NO.1560 OF 2023

**PRADIP @ BALU @ BABANAIAK EKNATH PATHOLE
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Sohel E Siddiqui
APP for Respondents: Mr. K.S. Patil.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 11TH OCTOBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 435 of 2023 registered with Police Station New Mondha, Dist. Parbhani for the offences punishable under Sections 302 of IPC.

2. The investigation was set in motion on the basis of the complaint dated 1.11.2022 made by Ambadas Kondiba Dipke, who states that he lost his father in the childhood. Mother Gumfabai had illicit relation with the accused Balu Pathole (present applicant). They were residing together at Prayadarshini Nagar, Karegaon Road, Parbhani in a rented house owned by Tryambak Pandurang Sawant. It is alleged that accused used to demand money from his mother for drinking liquor and also used to quarrel with her. It is further alleged that because of consistent quarrels between his mother and applicant, owner of the house had asked them to vacate the premises. However, on their assurance not to repeat the quarrels, they were permitted to continue to

reside in the rented premises. It is alleged that on 1.11.2022, he received message from his uncle that room of his mother is locked from outside and foul smell/bad odour was emitting. Immediately, the informant rushed to the house of his mother. He noticed that the room was locked from outside and there was foul smell. The police had arrived. The lock was broke opened. It was noticed that the mother of the informant is dead and body is in a decomposed condition.

3. On the basis of the aforesaid information, Crime No. 435 of 2022 was registered. The applicant has been arrested on 3.11.2022. Investigation progressed. During investigation, statement of the landlord/owner of the house has been recorded. He disclosed that on 25.10.2022, he saw that applicant locked the room from outside and then left the place. On 1.11.2022, it was detected that deceased Gumfabai was found in dead condition. The statement of one of the neighbours, namely, Sitabai Jamdhade is also on the same lines. The post mortem report shows that body was in advanced stage of decomposition. Therefore, the cause of death could not be detected.

3. The applicant moved an application for grant of bail before the Sessions Court. However, it came to be rejected vide order dated 19.6.2023. Hence, the present application.

4. Mr. Siddiqui Sohail, learned advocate for the applicant would submit that the case of the prosecution is based on circumstantial evidence. Except the fact that applicant was residing with the deceased and he was lastly seen on 24.10.2022 leaving the room; no other material is placed on record in the charge-sheet to show that the

applicant has committed any offence. He would submit that applicant is behind bars for more than one year. Although charge is framed, trial has not progressed. Further detention of the applicant would not be necessary. Hence, urged to release the applicant on bail.

5. The learned APP opposes the application. He would submit that two witnesses have clearly stated that on 25.10.2022, the applicant had locked the premises and went away. Thereafter, on 1.11.2022 the deceased was found lying in her room in a decomposed state. It is for the applicant to explain the reason for the death of the deceased. He would, therefore, submit that in view of Section 106 of the Evidence Act, the entire burden would be on the applicant to explain the death of the victim. He would further submit that release of the applicant may hamper the smooth prosecution.

6. Having considered the submissions advanced, it is apparent that the applicant was residing with the deceased and lastly he was seen on 25.10.2022 while leaving the room. Thereafter, dead body of the deceased was found on 1.11.2022. Perusal of the post-mortem report shows that cause of death could not be ascertained since the body was in advanced stage of decomposition. Perusal of column No.17 of the post mortem report indicates that even no injury could not noticed as body was in decomposed state.

7. In that view of the matter, there is no clear evidence on record as regards homicidal death of the deceased. It can not be ascertained on the basis of the material in charge sheet whether death of deceased was natural or homicidal. In absence of essential piece of

evidence confirming cause of death, applicant can not be further detained with charge of murder. Hence, a case is made out for grant of bail. Hence, the order :-

O R D E R

- (i) The application is allowed.
- (ii) The applicant – Pradip @Balu @ Babanaik Eknath Pathole, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in crime No. 435 of 2023 registered with New Mondha Police Station, Dist. Parbhani, on the following conditions :-

[a] The applicant shall not tamper with the prosecution evidence/witnesses.

[b] The applicant shall attend the trial on each and every effective date.

[c] The applicant shall not leave the State of Maharashtra without permission of the Court.

[d] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-