

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

BAIL APPLICATION NO. OF 1769 2022

Madhav S/o Sopan Thotve,
Age-36 years, Occu:Agri.,
R/o-Hasnal, Tq-Mukhed,
District-Nanded.

...APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Mukramabad Police Station,
District-Nanded.

...RESPONDENT

...
Mr. S.R. Sapkal Advocate for Applicant.
Mr. R.D. Sanap, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 17th MARCH, 2023

ORDER :

1. Present Application is the second bail application before this Court by the applicant. His earlier Bail Application bearing No.491 of 2022 was rejected by this Court on 26th April 2022. He was applicant No.1 in the said application, along with two other co-accused. It will not be out of place to mention here that the

said bail application was partly allowed. Applicant Nos. 2 and 3 therein were directed to be released on bail under Section 439 of the Code of Criminal Procedure.

2. The applicant came to be arrested on 27th November 2021 in connection with Crime No.251 of 2021 by Mukramabad Police Station, Taluka-Mukhed, District-Nanded, for the offence punishable under Section 302, 201, 364, 365 read with Section 34 of the Indian Penal Code. The applicant has filed present application under Section 439 of the Code of Criminal Procedure.

3. The investigation was complete and charge-sheet was filed on 10th February 2022. That means, when earlier bail application of the applicant was rejected, this Court had considered the material in the charge-sheet.

4. Heard learned Advocate Mr. S.R. Sapkal appearing for the applicant and learned APP Mr. R.D. Sanap for the State.

5. Learned Advocate Mr. S.R. Sapkal submitted that custody of the applicant is not required as the investigation is over. There is no direct or circumstantial evidence against the applicant. The motive behind the murder is stated to be love affair of daughter

of the applicant with deceased, however, even for that purpose there is no evidence. The dead body was highly decomposed and the cause of death was not stated in the postmortem report. The applicant came to be arrested only on the basis of suspicion. When the panchnama dated 28th November 2021 was prepared, the applicant was not in the custody of the police and therefore, it cannot be considered under Section 27 of the Indian Evidence Act. Learned Advocate pointed out that the panchnama dated 28th November 2021 in respect of pointing out the dead body and discovery as well as the separate memorandum panchnama of the same date of the discovery are executed by two different panchas, when in fact those should have been by the same panchas. It would take long time to stand the trial and therefore the applicant deserves to be released on bail.

6. Per contra, the learned APP submitted that the previous bail application of the applicant was rejected taking into consideration the evidence that has been collected against him. Now, there is no change in the circumstance and therefore this Application is not maintainable and deserves to be rejected.

7. The First Information Report (for short "FIR") has been lodged by one Ravikant Nagnath Jadhav on 27th November 2021.

Occurrence is stated to have taken place between 31st October 2021 to 27th November 2021. The FIR was lodged only against present applicant and original accused No.2. It was stated in the FIR that informant is the brother of deceased Suryakant. Suryakant had gone to village Vita, Taluka-Khanapur, District-Sangli, as JCB Operator and he had come to Udgir for taking Poclain Machine of his employer. That Poclain Machine was at village Narsi. On 30th October 2021, Suryakant stayed at night in the house of his sister at Ravankola. When he was near village Barhali at about 01.00 p.m. of 31st October 2021, he gave a phone call to his mother on mobile and told that he would take the Poclain machine from village Narsi and then he would come. Thereafter, there was no contact between Suryakant and his family members, and therefore, his mother had lodged missing report. Thereafter, on 27th November 2021, the informant says that Suryakant had love affair with a girl in his relations who is the daughter of applicant, and after the said fact was revealed, Suryakant went to Sangli for work. It is then stated that present applicant i.e. accused No.1 and original accused No.2 had called informant from Pune and asked him that he should give understanding to Suryakant, and therefore, the informant had told Suryakant that he shall not talk with the girl. Thereafter also

it was then heard that Suryakant was still talking with girl, and therefore, present applicant had given threat to informant that he would kill the family members. When the FIR was lodged at that time it was the suspicion that was expressed by informant that Suryakant might have been abducted by present applicant and original accused No. 2 and would have been kept somewhere.

8. It appears that on the same day of the FIR, the applicant alongwith original accused No.2 came to be arrested, and thereafter, applicant had discovered the dead body of Suryakant from the field of one Manohar Sakhaji Ravangaonkar from their village. The dead body was identified. Inquest panchanama was prepared and it was sent for post-mortem. The other co-accused came to be later on arrested and after the investigation, the charge-sheet has been filed.

9. The case is depending upon circumstantial evidence, however, the circumstances against present applicant are strong. He had discovered the dead body of Suryakant. It was tried to be submitted by the learned Advocate Mr. S.R. Sapkal that it appears that the discovery is first and thereafter it has been shown to be under Section 27 of the Indian Evidence Act. As

observed earlier, the time of the arrest of applicant is stated to be 15.45 hours on 27th November 2021, applicant gave the memorandum between 09.12 to 09.45 a.m. on 28th November 2021, and the place was shown, dead body was taken out by excavation between 14.35 to 16.57 hours on 28th November 2021. We will have to go by the timings those have been given in the charge-sheet. It is to be noted that one panchnama appears to have been drawn by Tahsildar in his capacity as Tahsildar. However, the memorandum panchnama under the head "Panchnama under Section 27 of the Indian Evidence Act" has been got executed by the Investigating Officer and under such circumstance, possibility of engaging two different panchas by the two different authorities at the same time cannot be ruled out and only the Tahsildar's signature has been obtained on the memorandum panchnama under Section 27 of the Indian Evidence Act. Even if for the sake of arguments it is accepted that applicant was merely in custody of police and he had discovered the dead body, yet it would be relevant under Section 8 of the Indian Evidence Act in view of the decision in ***Aghnoo Nagesia vs State Of Bihar***, reported in **1966 SCR (1) 134**.

10. Evidence against present applicant is the discovery of wooden handle or log which he had concealed in land. As

regards the statements of witnesses are concerned, they have stated that applicant had the reason to be inimical with Suryakant in view of the fact that his daughter was having love affair with Suryakant. Even the statement of the daughter of applicant has been recorded twice and in both statements she has stated that she had love affair with Suryakant and it was not approved by her father i.e. present applicant. Thereafter, if we consider the post-mortem report then it can be seen that body was highly decomposed and the final cause of death was not taken. During the course of hearing of previous bail application, the learned APP has shown the final certificate given by the Medical Officer on 10th April 2022 stating that the final cause of death is, "cerebrovascular arrest by head and neck injury." Therefore, the death of Suryakant can be said to be homicidal one. The statements of those persons who had dug the place which was shown by applicant, and thereafter the dead body was excavated, have also been recorded. Statement of mother of the deceased would show that according to her, she had heard voice of Suryakant while he was talking with somebody else and telling that he will not do such act in future. But then the mother has stated that when she tried to contact Suryakant again, the contact could not be established, and therefore, she went to one

Prakash Patil who had then contacted applicant. Thereafter, applicant came to house of Prakash Patil and disclosed that Suryakant had met him but he gave jerk to the hand of the applicant and fled away. We cannot get concrete idea from this statement, but suffice it to say that the mother was also saying that there was some reason for applicant to commit such act. The statements of witnesses have also been taken under Section 164 of the Code of Criminal Procedure. In view of the material, even earlier also this Court had come to the conclusion that there is material against applicant No.1 therein i.e. present applicant. A brutal murder has taken place of a young boy, therefore, the applicant does not deserve discretionary relief to be released on bail under Section 439 of the Code of Criminal Procedure and the application deserves to be rejected.

11. Accordingly, the Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]