

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

BAIL APPLICATION NO.1937 OF 2023

**MADAN BHANUDAS RATHOD
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mr. Salunke Sudarshan J
APP for Respondents: Mr. S.A. Gaikwad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 5th DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 159 of 2023 registered with Ambejogai Rural police station, Dist. Beed, for the offences punishable under Sections 302, 201 of IPC.

2. The investigation was set in motion on the basis of the information given by Govind Motiram Shinde, who alleges that his sister Rekha Bhoge was missing since 6.4.2023 and the Missing Report No. 9 of 2023 was registered on 7.4.2023. On 6.5.2023, he received information that on Ambejogai to Pathan Mandwa Road, a dead body of a lady is found. On his inquiry, he came to know that A.D. No. 25 of 2023 dated 5.5.2023 is registered with police station under Section 174 of Cr.PC. and the articles alongwith dead body were collected by the police. After seeing those articles, the applicant got confirmed that it belonged to his sister. Thereafter, DNA sample of the deceased was collected and it was found matched with family members. As such, it was confirmed that the decomposed body was of Rekha. Thereafter, on 17.6.2023, he was

informed by the police that accused Madan Rathod admitted about causing murder of deceased Rekha on account of his illicit relationship. Accordingly, first informant states that he had doubt about the applicant being the offender. The investigation progressed. After due investigation, charge sheet has been filed. The applicant came to be arrested on 17.6.2023. His application for grant of bail has been rejected by the Court of Sessions vide order dated 18.10.2023. Hence, this application.

3. Mr. Salunke, learned counsel of the applicant would submit that the case of the prosecution is based on circumstantial evidence. It is obligatory on the part of the prosecution to bring on record clinching evidence with complete chain of circumstances leading to the guilt of the applicant. In support of his submission, he would rely upon the judgment of the Supreme Court of India in the matter of ***Shailendra Rajdev Pasvan and others Vs. State of Gujarat: reported in AIR 2020 SC 180***. He would further submit that circumstances relied upon by the prosecution against the applicant are not sufficient to bring home guilt against him. He would point out that prosecution relies upon the following circumstances :-

[i] The deceased was last seen in the company of the applicant.

[ii] when she was missing, the CDR relating to mobile numbers of the victim and applicant shows that they were in similar tower location;

[iii] the deceased had conceived pregnancy probably out of the illicit relations of the applicant and both of them had been to doctor for termination of pregnancy.

He would submit that the aforesaid circumstances may bring on record strong motive against the applicant. However, it does not complete the chain of circumstances by which a definite conclusion of guilt of the applicant can be drawn. Therefore, he urges that the applicant be released on bail.

4. Learned APP strongly opposes the prayer. He would point out that the daughter of the deceased had seen the applicant in compromising position which confirms illicit relations between the deceased and the application. The statement of Dr. Shobha Kabra confirmed that the victim and the applicant had visited her dispensary for termination of the pregnancy of the deceased on 5.4.2023. He would further submit that the witness Eknath Bhoge had seen the applicant alongwith deceased while he was proceeding on motorcycle. He would submit that the CDR/Tower location supports the applicant and the victim were at the same location at the crucial time, when she died. Therefore, he submits that the circumstances are sufficient to bring home the guilt against the applicant. He, therefore, urges to reject the application.

5. Having considered the submissions advanced, apparently, the dead body of the deceased was found in completely decomposed state. Even the post mortem report could not be carried. There is nothing to confirm the cause of death. Learned APP fairly submits that on the basis of the evidence available on record it is difficult to make statement regarding the cause of death of the deceased. Evidently, the prosecution is not in a position to state whether death of the deceased was homicidal or not. So far as complicity of the applicant in relation to the offence, as

pointed out in earlier paragraphs, mainly there are 3 circumstances on which the prosecution relies against the applicant. Even for sake of argument if it is accepted that the deceased was lastly seen in the company of the applicant on 5.4.2023, as stated by witness Govind, there is no further evidence that the applicant was author of the injuries suffered by deceased. The discovery panchanama recorded under Section 27 of the Evidence Act depicts that the informant has shown the place of incident. However, as rightly pointed out by Mr. Salunke, learned advocate for the applicant, the spot of the incident was earlier known to the police and dead body of the victim was already recovered from that place. Therefore, such statement of discovery is prima-facie of no significance.

6. It is true that the victim had conceived pregnancy and she had been to Doctor alongwith the applicant for the purpose of termination of such pregnancy. However, only on the basis of such circumstances, it is difficult to draw inference that accused is only responsible for the death of the deceased. Pertinently, in absence of the cause of death on record, it is difficult to prima facie believe that it is a case of murder at the hands of the applicant. Hence, a case is made out for grant of bail.

O R D E R

- (i) The application is allowed.
- (ii) Applicant – Madan Bhanudas Rathod, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- (rupees fifty thousand), with one solvent surety of the like amount, in connection with Crime No. 159 of 2023 registered with Ambejogai Rural police station, Dist. Beed, for the offences punishable under Sections 302, 201 of IPC on the following

conditions :

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

[b] The applicant shall attend each and every effective date of trial

[iii] Needless to mention here that the observations made above are on prima facie consideration of the material on record and are made only for the purpose of deciding the application.

[iv] The application stands disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-