

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

BAIL APPLICATION NO. 2191 OF 2023

**MANOJ VASUMAL MOTIYANI
VS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Mrs.Zaware S.M. h/f Mr. Dushing Sanjay B.
APP for Respondent/State : Mr. A.S. Shinde

CORAM : S. G. CHAPALGAONKAR, J.
DATE : 20.12.2023

PER COURT :

1. The applicant seeks regular bail in connection with Crime No. 445 of 2023 registered with Loni police station District Ahmednagar for the offences punishable under Sections 302, 364, 364-A, 384 read with Section 34 of the Indian Penal Code.
2. The investigation has been set in motion on the basis of the information given by Mr. Nilesh Mukтажi Dhadwad, police officer, Loni Police Station, District Ahmednagar. In nutshell, it is alleged that on 30.07.2023 information was received to the police station from one Suresh Khope that a dead body of unknown person was laying in the field of Somnath Magar. Accordingly, police visited the spot and found the dead body of unknown person, aged about 45 to 55 years. There were bleeding injuries on his chest. Accordingly it was reported that the unknown person has caused murder. During the course of investigation the applicant came to be arrested on 31.07.2023. Since then he is behind the bar. Initially, the wife of the victim had lodged a missing report wherein she had raised suspicion on applicant owing to dispute between the victim and applicant as regards to the landed property and the applicant alleged to have threatened the victim.

3. The investigation progressed. The statements of Mr. Kiran Latpate and Mr. Jishan Sayyad have been recorded wherein they assert that the applicant and Swami Gosavi were lastly seen in the company of deceased. They were shown photographs of deceased Vitthal, on the basis of which they identified that the person in the company of accused was the deceased Vitthal. The statement of one Baban Baburao Bhingardive refers to the dispute between the applicant and the deceased Vitthal and settlement arrived between them. The station diary along with memorandum form under Section 27 of the Evidence Act show that the applicant has shown the spot of the incident. Pertinently, nothing incriminating was found from the said spot. The memorandum recorded under Section 27 of the Evidence Act did not lead to any discovery.

4. Learned advocate appearing for the applicant would submit that from the material collected during the investigation at the most some motive can be asserted against the applicant. However, no further circumstances leading to guilt of the applicant/accused are brought on record.

5. Per contra, the learned A.P.P. submits that when wife of the deceased victim had lodged the missing report she had expressed suspicion about the applicant. Further two witnesses have stated that the victim was lastly seen in the company of the applicant and the co-accused. There is material to indicate that the applicant had strong motive to commit murder of the deceased.

6. Having considered the submissions, and material in charge-sheet, it can be gathered that the case of the prosecution is based on the circumstantial evidence. It is a trite that the prosecution needs to bring impeccable circumstances on record which lead to the conclusion of guilt against the accused without there being possible hypothesis leading to innocence of the accused. If the evidence available in the charge-sheet is scanned, apparently, except the alleged motive against the applicant no

clinching evidence is made part of investigation papers. Although two witnesses have stated about the presence of the applicant in the company of deceased in the evening of 29.07.2023 that itself is not sufficient to infer involvement of applicant in commission of the offence. Neither there is recovery of incriminating articles like weapon of offence, blood stained clothes or any other article that could have treated as material circumstance to bring complicity of applicant in commission of the offence. This Court has already enlarged co-accused on bail vide order dated 25.10.2023. The applicant is behind the bar for four and half months till the date. The evidence in the charge-sheet *prima facie* appears bereft to make out the case against the applicant, therefore, further detention of the applicant need not be continued. A case is made out for grant of bail subject to certain conditions. Hence, the following order.

O R D E R

- i. Bail Application is hereby allowed.
- ii. The applicant Manoj Vasumal Motiyani be released on bail in connection with Crime No. 445 of 2023 registered with Loni police station District Ahmednagar for the offences punishable under Sections 302, 364, 364-A, 384 read with Section 34 of the Indian Penal Code, on his furnishing P.B. & S.B. of Rs.50,000/- (Rs.Fifty Thousand), on the following conditions :-
 - a] The applicant shall not tamper the prosecution evidence.
 - b] The applicant shall attend each and every effective date before the trial court.

(S. G. CHAPALGAONKAR, J.)

mkd/-