



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.653 OF 2024**

Pandharinath S/o. Parasram Waghchaure
Age: 29 years, Occ: Agriculture,
R/o. Dhangarwadi Aurala,
Tq. Kannad, Dist. Ch. Sambhajinagar
(Aurangabad)

..Applicant

Versus

The State of Maharashtra,
through Police Inspector,
Police Station Kannad (Rural),
Tq. Kannad, Dist. Aurangabad.

..Respondents

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Mr. P. M. Nagargoje, Advocate for the Applicant.
Mr. K. B. Jadhavar, APP for Respondents-State.
Mr. Vishal Dhundale, Advocate for the Informant.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 28th JUNE 2024.
PRONOUNCED ON : 03rd JULY 2024.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.251/2022 registered with Kannad (Rural) Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 201, 397, 120-B r/w 34 of the Indian Penal Code.

2. On 20.11.2022 a missing report was lodged by Vinod Dhanulal Jaiswal stating that his nephew Sagar Jaiswal is missing. On 01.12.2022 the dead body of Sagar was located. Accordingly, FIR was lodged against unknown persons. The investigation progressed. The applicant and two others were arrested on 03.12.2022. After completion of investigation, charge-sheet has been filed in Sessions Case No.190/2023 for the offences punishable under Sections 302, 201, 397, 120-B r/w 34 of the Indian Penal Code.

3. Previously the Bail plea of the applicant was rejected by the Sessions Court. Thereafter, he approached this Court in Bail Application no.1353/2023. However, it was withdrawn with liberty to file fresh application after six months. The applicant again approached the Sessions Court on expiry of six months, however, suffered rejection of the application vide order dated 22.03.2024. According to the prosecution, the applicant Pandharinath in connivance with other accused persons committed murder of deceased Sagar on 20.11.2022 in Baltek Shivar and snatched gold chain, earrings from his person and thrown his dead body in the pipeline of bridge.

4. Mr. Nagargoje, learned Advocate appearing for the applicant submits that the applicant is innocent person and falsely implicated in aforesaid crime. The entire case of the prosecution is based on memorandum statement of applicant recorded u/s 27 of Indian Evidence Act. However, such statement is inadmissible under Indian Evidence Act. The circumstantial evidence does not form complete chain that will lead to definite conclusion of guilt of the applicant/accused.

5. Mr. Jadhavar, learned APP, however, submits that the chain of circumstances clearly pin point the guilt of the applicant. The deceased lost his life due to head injury. During the course of investigation, the applicant produced weapon of offence. The ornaments are recovered at the instance of the co-accused. The motorcycle used in commission of crime is also recovered. During the investigation, statement of the applicant has been recorded under Section 27 of the Indian Evidence Act and based on his disclosure, one hammer and white colour shirt has been recovered and during house search of the applicant, a gold ring and chain has been recovered.

6. Having considered submissions advanced, apparently the case of the prosecution is based on circumstantial evidence. It is alleged that there was some money transaction between the deceased and the applicant. Perusal of the witness statements in the charge-sheet shows that Mr. Sandip Khandelwal, owner of Shakambari Kirana/Grocery Shop stated that on 20.11.2022, the applicant had purchased a cake and Silage Plastic Bag from his shop. According to the prosecution case, dead body was found rapped into such bag. However, there is nothing to indicate that the said plastic bag was identified by the witness Sandip Khandelwal after recovery of dead body. So far as recovery under Section 27 is concerned, it is shown that the hammer and white colour shirt having blood stains have been discovered at the instance of the applicant/accused. However, as rightly pointed out by the learned Advocate appearing for the applicant/accused, there was no corresponding injury that can be inflicted by hammer on the body of the deceased. The postmortem report shows only one injury on head i.e. "Incised Wound Occipital Bone 2x1x1". The forensic report placed on record in respect of so called blood stains on shirt or hammer is inconclusive. One more circumstance has been relied by the prosecution that the applicant/accused mortgaged gold ornaments with Samata Nagari Pat Sanstha but in absence of linking evidence no adverse inference can be drawn based on such evidence.

7. If the aforesaid circumstances are considered together, it is difficult to make out chain of circumstances that would rule out any other hypothesis than the guilt of the accused. None of the circumstance individually or cumulatively sufficient to accept the complicity of the applicant in commission of offence. The applicant is arrested on 03.12.2022 and he is behind the bar for more than

19 months. It is informed that the trial is at nascent stage and likely to take its own course. There are no criminal antecedents to discredit the applicant. In that view of the matter, further detention of the applicant is not necessary. Hence, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Pandharinath S/o. Parasram Waghchaure be released on bail in Crime No.251/2022 registered with Kannad Rural Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 201, 397, 120-B r/w 34 of the Indian Penal Code on furnishing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) on following condition:
 - a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicant shall attend each and every effective date before Sessions Court.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE