

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.296 OF 2024

Anil Maruti Mane
Age 26 years, Occ. Labour,
R/o Bhegar Vasti, K. Mahankal,
Taluka Kavthe Mahankal,
District Sangli,
Appellant at present
Sangli Central Prison, Sangli.

....Appellant

V/S

1 State of Maharashtra
Through Kavathe Mahankal
Police Station, Sangli in
CR No.361 of 2023.

2 Megha Suryakant Athawale,
Age 42 years, Occ. Labour,
R/o Bhegar Vasti, K. Mahankal,
Tal. Kavthe Mahankal,
District Sangli.

....Respondents

Mr. Umesh R. Mankapure with Ms. Stefy Dias *for the Appellant.*
Ms. Shilpa K. Gajare-Dhumal, APP *for Respondent No.1/State.*
Ms. Shilpa Hadwale i/b Mr. Santosh Sanjkar *for Respondent No.2.*

CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 9 JULY 2024.
PRONOUNCED ON : 12 JULY 2024.

JUDGMENT:

1 This is Appeal filed under Section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging order dated 14 February 2024 passed by Additional Sessions

Judge, Sangli, rejecting application filed by Appellant seeking anticipatory bail in connection with CR No.361 of 2023 for offences punishable under Sections 302, 201, 364, 323, 143, 147, 148, 149 of the Indian Penal Code and Section 3(2)(v) of the S.C. & S.T. Act.

2 Statement of the first informant-Megha Suryakant Athawale, mother of deceased is recorded on 6 October 2023, which is the basis for registration of FIR. That the first informant, alongwith her husband and son reside in the same lane in which accused Anuj Mane, Sunil Mane and Chaitanya Mane reside. Other accused Alwin Waghmare is a friend of Anuj Mane, Sunil Mane and Chaitnya Mane and resides in Ambedkarnagar, Kavthe Mahankal. Accused Anuj Mane, Anil Mane, Sunil Mane and Chaitanya Mane used to work as drivers on the ambulance of Shri Gopal Pachphule, who works in Government Hospital. That the deceased Sushil @ Panya Athawale used to steal the undergarments of women residing in the lane, on account of which the residents of the lane had beaten him. The deceased Sushil @ Panya had burnt the house of Sunil Mane on account of such assault. FIR was lodged against Sushil @ Panya and after securing bail for him, he was sent at village Yelavi, where first informant's married daughter was residing. After residing at village Yelavi for few days, deceased Suhshil @ Panya returned at Kavthe Mahankal. That three months before lodging of FIR, deceased Sushil @ Panya had sent a friend request to the wife of Chaitanya Mane on account of which accused Chaitanya Mane, Anil Mane, Anuj Mane, Sunil Mane and Alwin Waghmare had beaten him. The deceased got angry and published derogatory remarks by posting photographs of Chaitanya Mane's wife, Anuj Mane's mother and Sunil Mane's wife. Therefore, Anuj Mane's

mother had lodged complaint against the deceased on 11 June 2023. The deceased was accordingly arrested and detained in Sangli jail. During his custody, Chaitanya Mane and his friends were openly discussing in the lane that once the deceased was released from custody, he would not be kept alive. After 20 days, the deceased was released from custody and was sent at Kupwad MIDC for work. He returned to Kavthe Mahankal 10 to 12 days before lodging of the FIR to attend the date in the Court on 29 September 2023.

3 The FIR further alleges that on 1 October 2023, the informant's relatives Amol Dhende came home and informed the first informant that Sunil Mane and Anil Mane had told him to counsel the deceased as he was still gazing into the houses or else he would not be left alive. That on 4 December 2023 at 12 noon, the deceased had gone to Kavthe Mahankal market yard to answer nature's call and did not return home. After making enquiries, he could not be found and accordingly missing complaint was registered on 5 October 2023. On 6 October 2023, the relative Amol Mahadeo Dhende came home when the first informant told him about the deceased being missing, he informed the first informant that on 4 October 2023 at 12 noon when Amol Dhende had gone to market yard to collect garbage, he had seen that the deceased was assaulted by Chaitanya Mane, Sunil Mane, Anil Mane, Alwin Waghmare and Anuj Mane and was taken in ambulance of Gopal Pachphule at undisclosed location. The first informant therefore stated in her statement that the deceased was abducted by the accused with intention of killing him on account of sending of derogatory messages regarding Chaitanya Mane's wife, Sunil Mane's wife and Anuj Mane's mother.

4 It appears that accused Chaitanya Mane, Sunil Mane, Anuj Mane, Anil Mane and Alwin Waghmare were arrested on 7 October 2023. It is the story of prosecution that a *panchanama* under section 27 of the Indian Evidence Act, 1872 (**Evidence Act**) was recorded at the instance of accused Chaitanya Namdeo Mane with regard to discovery of handkerchief used for commission of the offence. The said *panchanama* discloses that Appellant-Anil Maruti Mane had strangled the deceased in the ambulance. The handkerchief was recovered and *panchanama* under section 27 of the Indian Evidence Act was recorded on 7 October 2023. The dead body of the deceased was later discovered on 10 October 2023. Accordingly supplementary statement of the first informant was recorded on 11 October 2023, in which she has alleged the accused have murdered the deceased. It appears that two more accused Kunal Sudhir Mane and Saddam Ilani Mulla were arrested on 12 October 2023 and 23 October 2023 respectively.

5 After completion of investigations, charge-sheet has been filed on 3 January 2024 against seven accused. After filing of the charge-sheet, Appellant filed application for bail under section 439 of the Code of Criminal Procedure on 11 January 2024. It appears that similar bail applications were also filed by the other accused. It appears that before filing of the charge-sheet, bail application of accused Kunal Sudhir Mane was allowed on 14 December 2023. After filing of the charge-sheet, bail applications of other accused are allowed as under:

- i) Accused No.5-Alwin Sanjay Waghmare on 2 January 2024,
- ii) Accused No.7-Saddam Ilani Mulla on 5 January 2024, and
- iii) Accused No.3-Anuj Amrut Mane on 22 May 2024.

6 So far as the bail application preferred by the Appellant is concerned, the same is rejected by the Additional Sessions Judge, Sangli by order dated 14 February 2024 which is the subject matter of challenge in the present Appeal.

7 Mr. Mankapure, the learned counsel appearing for Appellant would submit that Appellant deserves to be granted bail on the principle of parity as four other accused involved in the case are already released on bail. He would particularly highlight grant of bail in favour of Anuj Mane by the Additional Sessions Judge on 22 May 2024. According to him, even though Anuj Mane had stronger motive to commit the crime as derogatory remarks were published by the deceased on the photograph of his mother. He would also highlight grant of bail to Alwin Sanjay Waghmare, who is also specifically named in the FIR. That both Anuj Mane and Alwin Waghmare are allegedly last seen with the accused alongwith Appellant and if they are granted bail, Appellant also deserves to be granted bail. In this regard, he would highlight the statements of Amol Dhende, Shambhu Mane and Rajashri Pawar who all have named Anuj Mane and Alwin Waghmare assaulting the deceased and abducting him in the ambulance. That Rajashri Pawar has also named accused Saddam Ilani Mulla in the act of assault and abduction and that Saddam Ilani Mulla has been granted bail. He would therefore submit that on the principle of parity, Appellant also deserves to be granted bail.

8 Mr. Mankapure would further submit that the entire case is sought to be built on mere circumstantial evidence based on the deceased being seen in the company of the accused on 4 October 2023. That the conduct

of the deceased was such that people at large residing in the lane were bound to have grudge against him and it is difficult to accuse the Appellant of murdering him. That though the role ascribed to the Appellant is otherwise similar to the other accused released on bail, the Additional Sessions Judge has rejected the bail only on account of *panchanama* under section 27 of the Evidence Act, in which Chaitanya Mane allegedly made statement about Appellant strangulating the deceased. That the said statement recorded under section 27 of the Evidence Act is required to be restricted only to the aspect of discovery of handkerchief and balance part of the alleged statement of Chaitanya Mane is required to be altogether discarded in accordance with the law laid down by the Apex Court in ***Venkatesh alias Chandra and another vs. State of Karnataka***,¹. He would submit that once the *panchanama* under section 27 of the Evidence Act is discarded *qua* the role of Appellant, there is absolutely no difference between the role ascribed to the Appellant as compared to the other four accused.

9 Mr. Mankapure would further submit that since the whole case is built on circumstantial evidence on the basis of last scene theory, which is a weak piece of evidence, the Appellant deserves to be granted bail. He would submit that the Apex Court has repeatedly held that the circumstances of 'last scene together' cannot by itself lead to conviction. In support, he would rely upon judgments of the Apex Court in ***Ganpat Singh vs. State of Madhya Pradesh***², ***Anjan Kumar Sarma vs. State of Assam***³,

¹ 2022 SCC OnLine SC 765

² (2017) 16 SCC 353

³ (2017) 14 SCC 359

*Arjun Marik vs. State of Bihar*⁴, *State of Karnataka vs. Chand Basha*⁵. He would further submit that there is a long gap between the date of missing and the date of discovery of body and the possibility of supervening event cannot be ruled out, especially since the entire residents of the lane had grudge against the deceased because of his conduct. In support, he would rely upon judgment of the Apex Court in *Rambraksh alias Jalim vs. State of Chhattisgarh*⁶. He would submit that this Court has granted bail in cases involving mere circumstantial evidence of ‘last scene theory’ in numerous cases and would rely upon orders passed by this Court in *Prashil Sanjay Jadhav vs. State of Maharashtra*⁷, and *Mahadev @ Baban Achyut Kharate vs. State of Maharashtra*⁸, Lastly Mr. Mankapure would rely upon recent judgment of the Apex Court in *Javed Gulam Nabi Shaikh vs. State of Maharashtra*⁹, in support of his contention that the Appellant cannot be incarcerated in jail in violation of his right to have speedy trial under Article 21 of the Constitution. Mr. Mankapure would therefore pray for allowing of the Appeal and release of the Appellant on bail.

10 The Appeal is strongly opposed by Ms. Shilpa Gajare-Dhumal, the learned APP appearing for the Respondent No.1/State. She has highlighted the chain of circumstances to demonstrate that there is no other possibility than the accused, including Appellant, committing the crime. She would bind the entire chain of circumstances to make out a demonstrable case for possible conviction of the Appellant. She would submit that the deceased was last seen together with the accused by as many as four persons. That

4 1994 Supp. (2) SCC 372

5 (2016) 1 SCC 501

6 (2016) 12 SCC 251

7 Criminal Application (BA) No.1079 of 2022 decided by Bench at Nagpur on 28 September 2022

8 Bail Application No.1068 of 2022 decided by Bench at Aurangabad on 26 September 2022.

9 Criminal Appeal No.2787 of 2024 decided on 3 July 2024

the accused had motive to kill the deceased. That one of the witnesses have even seen the accused at the venue of discovery of body. That the handkerchief used for commission of the crime belongs to Appellant, which has been recovered. That accused Chaitanya Mane has specifically made a statement about Appellant strangulating the deceased with the said handkerchief. That the said statement is corroborated by post-mortem report, which clearly records finding of ligature marks on the neck of the deceased, suggesting death by strangulation. That the dead body has been discovered in the canal at which the accused were seen by the one of the witnesses-Shambhu Mane. That the use of ambulance by the accused is proved by the statement of one of the witnesses. The use of Light Commercial Vehicle (LCV) for disposal of the body is also proved by statement of Harshala Maroti Mane. That the act of washing of ambulance at the car washing centre is also witnessed by witness-Vishwanath Swami. That the accused had deliberately kept their mobile phones under the pretext of repairs in Mobile Shoppee during the time of commission of crime and the statement of Mobile Shoppee operators are recorded. That the LCV used for disposal of the body was equipped with GPS tracker and data of the GPS tracking is recovered. That mobile phones of the accused have been recovered. Taking me through the postmortem report, she would submit that the report clearly shows probable cause of death before 4 to 5 days with possible timing of 12 noon to 3 p.m. on account of semiliquid fluid present in the body. Thus, the entire chain of circumstances from abduction of the deceased to recovery of body is clearly established and that no other person than accused could have committed the crime in question.

11 Ms. Gajare-Dhumal would rely upon the judgment of the Apex Court in **Sharad Biridhichand Sarada vs. State of Maharashtra**¹⁰, in support of her contention that applying the five golden principles enunciated by the Apex Court, the chain of evidence is clearly established leading to possible conviction of the Appellant. She would rely upon judgment of the Apex Court in **State of Rajasthan vs. Kashi Ram**¹¹, in support of her contention that 'last seen alive' is an important factor and in the event of the deceased not being found in the company of any other person leads to a presumption that the accused must have committed the crime. She would rely upon judgment of the Apex Court in **Jagroop Singh vs. State of Punjab**¹², in support of her contention that the time gap when the accused were last seen with the deceased and when the deceased was found dead is required to be ignored. She would pray for dismissal of the Appeal.

12 Ms. Hadwale the learned counsel appearing for the Respondent No.2 would also oppose the Appeal and adopt the submissions canvassed by the learned APP.

13 I have considered the submissions canvassed by the learned counsel appearing for parties and have gone through the relevant documents placed on record.

14. The entire case appears to have been built on circumstantial evidence and according to the learned Applicant, the following chain of circumstances virtually cements the possibility of commission of crime by the accused and by none other:

10 AIR 1984 SC 1622

11 AIR 2007 SC 144

12 AIR 2012 SC 2600

- i) There are statements of witnesses viz. Amol Dhende, Vanita Mane, Rajashri Pawar and Shital Chandanshive all of whom had allegedly seen the accused, including Appellant, together with the deceased at 12 noon;
- ii) Witnesses Shambhu Mane has allegedly seen the accused travelling in LCV, described by witnesses as either *tamtam* or *dumdum* to Mhaishal Canal, in which the dead body was ultimately found;
- iii) Handkerchief used in commission of crime is recovered by recording *panchanama* under section 27 of the Evidence Act, in which accused Chaitanya Mane has stated that the Appellant strangled the deceased with the said handkerchief;
- iv) Recovery of handkerchief and theory of strangulation is sought to be corroborated by finding in the postmortem report about presence of ligature marks over the neck;
- v) Statement of Chandrakant Yeshwant Kharat, news channel reporter is recorded about recovery of dead body of the deceased from Mhaisal canal;
- vi) Statement of Sadhana Gopal Pachphule, wife of ambulance owner-Gopal Pachphule, who had engaged Chaitanya Mane and Anuj Mane as drivers is recorded. The said statement talks of Chaitanya Mane using the ambulance between 12 noon to 4 p.m. on 4 October 2023;
- vii) To establish the use of LCV for disposal of the dead body, statement of Harshala Maruti Mane is recorded, in which she has stated that the Appellant had asked Kunal Mane to get the small tempo and accordingly Kunal had taken keys of the tempo under false pretext and had driven away the same;
- viii) Statement of Vishwanath Gaurihar Swami is recorded to show washing of ambulance after commission of the crime at the car washing centre for charging the accused under section 201 of the Indian Penal Code for destruction of evidence;

ix) Statements of Mobile Shopee operators are recorded to indicate that the accused had deliberately kept their mobile phones at the repair centers between 12 noon to 1 p.m. with a view to mislead the investigators.

x) Lastly, statement of Onkar Rajendra Gavhane is recorded with regard to recovery of data in GPS installed in LCV used for destruction of the dead body.

15 On the basis of the above chain of circumstances, the prosecution has built the case against the accused. What is most important in the above chain are the statements of four witnesses Amol Dhende, Vanita Mane, Rajashri Pawar and Shital Chandanshive, all of whom apparently saw the accused, including Appellant, assaulting the deceased at 12 noon on 4 October 2023 and abducting him in the ambulance. The further statement of witness-Shambhu Yuvraj Mane alleges presence of LCV proceeding towards Mhaisal canal, which was driven by Kunal Mane with Saddam Mulla sitting besides and the same being followed by Chaitanya Mane, Sunil Mane and Anil Mane on red colour Pulsar motor bike. The witness states that after some time, all of them returned by same route to Kavthe Mahankal.

16 It is however seen that the other four accused are released on bail by the learned Additional Sessions Judge. It would be necessary to consider the role ascribed to each of them:

i) **Anuj Amrut Mane:** He had strong motive to commit crime as his mother's picture was used for spreading derogatory messages by the deceased. He is named in the FIR statement with regard to

allegation of assault and has accordingly the last seen theory is applied to him.

ii) **Alwin Sanjay Waghmare:** FIR statement of first informant names him in connection with assault and abduction of the deceased at 12 noon on 4 October 2023. He is also named by the witness Rajashri Pawar. Thus, the last seen theory is applied to this accused as well.

iii) **Kunal Sudhir Mane:** He allegedly brought the LCV by securing keys from Harshala Maruti Mane. Witness Shambhu Yuvraj Mane names him for driving the LCV towards the Canal and thereafter returning to Kavthe Mahankal. Thus, his role is associated with destruction of the dead body.

iv) **Saddam Ilahi Mulla:** He is named by witness Rajashri Pawar with regard to allegation of assault and abduction of the deceased at 12 noon on 4 October 2023. He is also seen by the witness Shambhu Yuvraj Mane in the LCV proceeding towards canal and thereafter returning to Kavthe Mahankal. Thus, this accused is associated with last seen theory as well as presence at the venue of destruction of the dead body.

17 The above four accused are released on bail by the learned Additional Sessions Judge. The Appellant claims parity with the said four accused. The learned Sessions Judge has however proceeded to reject the bail application by taking into consideration the following factors:

- (i) The deceased had burnt house of Sunil Mane who is real brother of the Appellant and therefore it was but natural for the Appellant to develop grudge against the deceased;
- (ii) Appellant was one of the five persons beating the deceased when the deceased had sent friend request to Chaitanya Mane's wife;
- (iii) The deceased had published derogatory messages relating to Sunil Mane's wife and it was but natural for Appellant to develop grudge on account of such messages in respect of his sister-in-law;
- (iv) Appellant and Sunil Mane had specifically told Amol Dhende on 1 October 2023 that the deceased was still gazing inside the houses and that he would be killed;
- (v) The first informant learnt from Amol Dhende that Appellant was one of the persons who had assaulted and abducted the deceased;
- (vi) Postmortem report suggest death by strangulation and the handkerchief used for strangulation by the Appellant is recovered;
- (vii) Amol Dhende had witnessed assault and abduction of the deceased by Appellant;
- (viii) Shambhu Mane saw Appellant proceeding to Mhaisal Canal;
- (ix) Statement of Shital Chandanshive shows that accused including Appellant were unhappy with the conduct of the deceased and were calling each other at 12 noon, jumped the fencing where deceased was answering nature's call, assaulted and abducted him.

18 On the above nine broad factors, the Additional Sessions Judge thought it appropriate deny the bail to the Appellant. The main factor found by the Additional Sessions Judge against the Appellant is strangulation of the deceased by the handkerchief of Appellant and motive of the Appellant to kill the deceased on account of spreading of derogatory remarks about his sister-in-law.

19 Thus one of the main factors considered by the learned Sessions Judge for denial of bail is recovery of handkerchief through *panchanama* recorded under section 27 of the Evidence Act at the instance of Chaitanya Mane.

20 I have gone through the *panchanama* recorded under section 27 of the Evidence Act, wherein accused-Chaitanya Mane has allegedly taken the police to the spot at which the handkerchief used in the crime was recovered. However, while preparing the said *panchanama*, police has recorded ‘memorandum made by the accused’ *inter alia* to the effect that the deceased was abducted with the intention of killing him and while he was driving the ambulance, Appellant strangled the deceased with his handkerchief. In my view, the said memorandum reflected in *panchanama* recorded under section 27 of the Evidence Act, ought not to have been included therein and even if recorded, the same is required to be discarded altogether. The Apex Court has repeatedly frowned upon tendency on the part of prosecuting agencies in getting the entire statement recorded rather than only the part of statement which leads to recovery of facts. In this regard, reliance by Mr. Mankapure on the judgment of the Apex Court in **Venkatesh alias Chandra and another** (supra) is apposite. The Apex Court has held in paragraphs 20 and 23 as under:

“20. Before we consider the merits of the matter, some of the features of the present case which we have found to be quite disturbing must be noted and deliberated upon. The Trial Court in paragraphs 27 to 30 of its judgment extracted voluntary statements of the appellants. **First and foremost, going by the parameters of Section 27 of the Indian Evidence Act, 1872 only so much of information which relates distinctly to the facts thereby discovered can be stated to have been proved.** The extent and ambit of said provision as well as applicability thereof were considered by the Privy Council in *Pulukuri Kotayya v. King-Emperor*, AIR 1947 PC 67 as under:

"10. Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to s. 26, added by s. 27, should not be held to nullify the substance of the

section. In their Lordships view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate-distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

(Emphasis added)

23. We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them."

(emphasis added)

21 Once the alleged statements of accused-Chaitanya Mane, except relating to discovery of handkerchief, are discarded, there appears to be nothing on record, atleast at this stage, by way of direct evidence to show the commission of murder of the deceased by Appellant. The Appellant then comes on par with the other four accused for being enlarged on bail. The role of the accused then gets restricted to assault and abduction of deceased and destruction of his dead body. In my view therefore, the Appellant will have to be given same treatment as extended to the other four accused.

22 It must be borne in mind that the entire case is built on circumstantial evidence and the 'last seen theory' is mainly adopted to prove the accusations against the Appellant. Mr. Mankapure has relied on series of judgments of the Apex Court in ***Ganpat Singh*** (supra), ***Anjan Kumar Sarma*** (supra), ***Arujun Marik*** (supra) and ***Chand Basha*** (supra) in support of his contention that 'last seen theory' alone is not sufficient to lead to conviction of the accused. Considering the limited issue involved in the present Appeal, it is not necessary to consider the ratio of those judgments which is essentially laid down while determining the validity of convictions/acquittals in those cases. However, reliance by Mr. Mankapure on orders passed by this Court in ***Mahadev @ Baban Achyut Kharate*** (supra) and ***Prashil Sanjay Jadhav*** (supra) relating to grant of bail when case involves mere 'last seen theory' and circumstantial evidence appears to be apposite.

23 Though Ms. Gajare-Dhumal has relied upon judgments of the Apex Court in ***Sharad Biridhichand Sarda*** (supra), ***Jagroop Singh*** (supra) and ***Kashi Ram*** (supra), in my view, it is not necessary to delve deeper into the issues of circumstantial evidence, last seen theory and time gap between accused being last seen and discovery of dead body considering the limited issue of bail involved in the present Appeal. As observed above, upon discarding the statement of Accused-Chaitanya Mane from panchanama recorded under section 27 of the Evidence Act, Appellant comes on par with the other four accused who are released on bail.

24. Mr. Mankapure has relied on recent decision of the Apex Court in ***Javed Gulam Nabi Shaikh*** (supra), which essentially emphasizes the right

of the accused for speedy trial and prolonged incarceration of prisoners, which factors are not present in the present case, the following observation of the Apex Court need to be taken note of:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

25 In the present case, there is no possibility of the trial being concluded in near future. Considering that the other four accused viz. Anuj Amrut Mane, Alwin Sanjay Waghmare, Kunal Sudhir Mane and Saddam Ilani Mulla are enlarged on bail, further incarceration of Appellant is not warranted. In my view therefore, the Appellant also needs to be granted parity with that of the four accused.

26 I accordingly proceed to pass the following order:

ORDER

- i) Criminal Appeal is allowed.
- ii) Order dated 14 February 2024 passed by the Additional Sessions Judge, Sangli is set aside.
- iii) It is directed that the Appellant shall be released on bail in CR No.361 of 2023 registered with Kavthe Mahankal Police Station, District Sangli for offences punishable under sections 302, 201, 364, 323, 143, 147, 148, 149 of the Indian Penal Code and section 3(2)(v) of the S.C. & S.T. Act, on furnishing PR Bond of Rs.40,000/- with one solvent surety in the like amount.
- iv) The Appellant shall not influence or pressurize any of the prosecution witnesses nor shall tamper evidence.
- v) The Appellant shall not leave the boundary of Sangli District till final decision of the case without prior permission.
- vi) Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence and mobile phone details, if any, from time to time to the Trial Court as well as to the concerned Police Station, in writing.
- vii) The Appellant shall cooperate in the conduct of trial and shall attend each date of hearing before the Trial Court, unless exempted.

viii) An undertaking to the aforesaid clauses (iv) to (vii) shall be filed by the Appellant, in the Registry of the Trial Court, within one week of his release.

ix) If there are two consecutive defaults in appearing before the Trial Court, the learned Judge shall make a report to this Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

27 The Criminal Appeal is allowed and disposed of accordingly.

28. It is clarified that the observation made herein are prima facie and the Trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

29. All concerned shall act on the copy of this Order digitally signed by the Private Secretary of this Court.

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.07.12
14:48:46
+0530