



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

928 CRIMINAL APPEAL NO. 922 OF 2024

Shivshankar S/o Shivaji Mule
Under Gaurdian of his mother
Aashvini W/o Shivaji Mule
VERSUS
The State Of Maharashtra

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Mr. A. K. Momin And Nikhat Momin, Advocate for the Appellant
Mrs. A. S. Deshmukh, APP for Respondent State
Mr. Kedar Balbhim, Advocate, Assists to PP

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CORAM : Y. G. KHOBRAGADE, J.

Dated : 6th March, 2025

PER COURT :-

1. Heard Mr. Momin, the learned counsel for the appellant, Mrs. Deshmukh, learned APP for the State with assists to prosecutor Adv. Kedar.

2. By the present appeal under section 101 (5) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Appellant/ Juvenile in Conflict with Law (in short "JCWL") through his mother has impugned the order dated 30.04.2024 passed by the learned Additional Sessions Judge, Latur, below Exh. 13 in Sessions Case No. 57 of 2024, whereby the application for bail is rejected for the offence punishable under Section 302 of the Indian Penal Code in

connection with Crime No. 299 of 2023 registered with Bhada Police Station, District Latur.

3. Facts rise to the present appeal that, on 30.12.2023, the informant Shri Tanaji Sopan Mali lodged the report with Bhada Police Station alleging that, on 29.12.2023, at about 9.30 p.m. his son Ranjit Tanaji Mali had gone to sleep in his Farm but on next day i.e. till 8.00 a.m. of 30.12.2023, his son did not return home after fetching milk. Therefore, one Shri Hanmant Mohan Mule was visited at his farm to see his son on say of Mr. Bharat Ramling Mule, the Dairy owner. After Shri Hanumant Mali visited his farm and seen that, Ranjit Mali was lying in pool of blood, with head injuries and was found dead. Accordingly, said Hanmant Mule visited the complainant and informed the incident. On the basis of said report, the Crime No. 299 of 2023 registered with Bhada Police Station for the offence punishable under Section 302 of Indian Penal Code against the unknown person.

4. After registration of Crime, on 31.12.2023, the appellant with his mother attend the Bhada Police Station and surrendered. The I. O. recorded confessional statement of the appellant in presence of his mother. Thereafter, the appellant/JCWL was

produced before the Juvenile Justice Board.

5. On 03.04.2024, the Juvenile Justice Board, Latur passed an order in Juvenile Case No. 42 of 2024 holding that, the appellant/ JCWL is aged about 17 years and 7 months but he has committed heinous and serious offence of brutal murder of deceased. Therefore, considering mental and psychiatric Report as well as maturity of understanding of the appellant/JCWL and gravity of offence, the appellant no benefits of juvenility was extended and directed the appellant to be tried as an adult and transferred said proceeding to the Children Court i.e. Special Children Court, Latur. The appellant has not challenged said order before the Appellate Court under Section 101 of the Juvenile Justice (Care & Protection of Children) Act, 2015. Thereafter, said case is registered as Sessions Case No. 57 of 2024 and as on today trial of said case is pending.

6. The appellant filed Exh. 13 an application under section 439 of the Criminal Procedure Code and prayed for enlarge him on bail in Crime No. 299 of 2023. On 30.04.2024, the learned Additional Sessions Judge passed the impugned order holding that, the statements of witnesses are shows that, the appellant/JCWL has

committed serious crime. The weapon scythe has been recovered on disclosure statement of the appellant/JCWL. The appellant/JCWL committed murder of deceased with preplan and cool mind. The confessional statement of the appellant shows about how he had hatched the plan to commit the crime, hence, declined to release the appellant on bail. Being aggrieved by said order, present appeal filed u/s 101 (5) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

7. The learned counsel appearing for the appellant canvassed that, there is no direct eye witness to the incident. However, case of the prosecution is based on circumstantial evidence as well as confessional statement of the appellant, which is allegedly recorded by the Investigation Officer. Therefore, said confessional statement of the appellant cannot be relied at this stage. Further, recovery of weapon under section 27 of the Evidence Act can not be the good ground to deny the bail. The appellant is in jail since 04.01.2024 and more than one year is over, hence, considering nature of offence and delay in trial prayed for bail.

8. The learned counsel appearing for the appellant relied on case of *Mohammad Inayatullah Vs. The State of Maharashtra*,

1976 AIR 483, wherein, the appellant was charged for the offence of theft of three drums of chemicals and he was taken into police custody. On interrogation, the appellant accused had disclosed the place of deposit of three chemical drums which were recovered from the place disclosed by the accused. Under the circumstance, in respect of recovery under section 27 of the Evidence Act, the Hon'ble Supreme Court laid guidelines for bringing the section into operation as under:

- (i) The discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence;
- (ii) The discovery of such fact must be deposed to;
- (iii) At the time of the receipt of the information, the accused must be in police custody; and
- (iv) Only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded.

9. The learned counsel for the appellant further relied on **Juvenile In conflict with Law Vs. The State of Rajasthan & another**, decided on 14th August, 2024 in Criminal Appeal arising out of Special Leave Petition (Cri.) No. 9566 of 2024, wherein the Juvenile, through his guardian had preferred an appeal challenging the order of rejection of second bail application by the Juvenile

Justice Board. Crime against Juvenile was registered for offences punishable under Sections 354 and 506 of the Indian Penal Code and Sections 9 and 10 of the Protection of Children from Sexual Offences Act, 2012 and two days before filing of the charge sheet, an application made by the appellant under section 12(1) of the Juvenile Justice Act was rejected. Taking into consideration of Section 12 of the POCSO Act, the Hon'ble Supreme Court released the Juvenile on bail.

10. The learned counsel for the appellant further relied on the order dated 20.02.2025, passed by the Division Bench of this Court in Criminal Appeal No. 36 of 2025, ***Vijay Uddhav Ghatcherle Vs. the State of Maharashtra***, wherein the offences punishable under Sections 302, 201, 120-B, 212, 216 read with Section 34 of Indian Penal Code and Sections 3(1)(i), 3(2), 3(3), 3(4) of M.C.O.C. Act were registered against the Juvenile alongwith other accused persons. Therefore, considering the role played by the appellant/ Juvenile and he was sent in observation Home for a period of three years and was to be shifted to Yerwada Cental Prison, the Juvenile was released on bail.

11. Per contra, the learned APP canvased that, statement

of witness Nikhil Jyotiram Puri recorded under section 161 of Cr. P.C., statements of Hanmant Mohan Mule, Akbar Usman Shaikh and seizure Panchanama of Clothes of appellant as well as Memorandum Panchanama and confessional statement of the Accused show that, the accused with cool mind had prepared the plan to commit the murder of deceased and in the night time the appellant committed brutal murder of deceased on suspicion that, the deceased was having illicit relation of his mother. The statements of witnesses recorded under Section 164 of Cr.P.C., show that the appellant/JCWL with preplan committed murder, therefore, if the appellant accused is released on bail in that event, there will adverse impact on mind set of the witnesses and there is every possibility of tampering of the prosecution witnesses. Hence prayed for rejection of the appeal.

12. Needless to say that as per contents of F.I.R., on 29.12.2023, the deceased visited at his farm to sleep and on next day morning he was to fetch the cattle milk and to deliver at Dairy. However, on 30.12.2023, the deceased did not return at his home, therefore, the dairy owner had sent his man to see the deceased at his farm. When Hanmant Mule visited the farm of deceased, at that time, he found the deceased was lying in a pool of blood with

severe injuries on head and dead. The material placed on record shows that, on 31st December, 2021, the appellant JCWL with his mother visited the police station and the appellant himself surrender before the Police. The confessional statement of appellant came to be recorded in presence of his mother. The confessional statement of the appellant gives detailed story how he had hatched the conspiracy and plan to commit the murder, how he got sharpen the Scythe. The statements of witnesses shows that, the appellant/JCWL had planned to commit murder of deceased because he was having doubt and rumors in his village about illicit relation between the deceased and his mother. Not only this, it further appears that after commission of crime, when he visited at his house, at that time, his servant Akbar Osman Shaikh had enquired about containing blood stains on his hand and weapon scythe and said Akbar Osman Shaikh was hesitating to pour water on the appellant's hand but the appellant had forced to said Akbar, hence, he had poured water on hand of the appellant. Thereafter, the appellant thrown said Scythe in the well which has been recovered under the Seizure Panchanama under section 27 of the Evidence Act.

13. As per provisions of Section 12(1) of the Juvenile

Justice Act, the application for bail is required to be filed through guardian but the application for bail was filed directly by the appellant. The witnesses as well as informant are residing in the same locality. The Offence punishable under section 302 IPC provides capital punishment or imprisonment for life, therefore, considering the nature of offence, which provides minimum life sentence, I do not find that the appellant has made out case for release him on bail during pendency of the trial.

14. In view of the above, I am not inclined to grant the appeal. Accordingly, the criminal appeal is dismissed.

(Y. G. KHOBRADE, J.)

JPChavan