



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2306 OF 2024

Abnish S/o. Radhesham Rathod,
Age : 28 years, Occu. : Labour,
R/o. Gramsurapur, Post. Paliya,
Tq. Sabayjpur, Dist. Hartoi,
State – Uttar Pradesh
At present
Near Madarsa Kharpudi,
Tq. & Dist. Jalna.

... Applicant

Versus

The State of Maharashtra,
Through Police Station Officer,
Jalna Police, Tq. Jalna,
Tq. & Dist. Latur.

... Respondent

.....

Mr. Rupesh Hake h/f. Mr. P. B. Jadhav, Advocate for Applicant
Mr. N. D. Batule, APP for Respondent – State.

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 JANUARY, 2025

PRONOUNCED ON : 24 JANUARY, 2025

ORDER :

1. Applicant seeks his enlargement on bail in consequence to his arrest in Crime No.490 of 2024 registered at Taluka Jalna Police Station, District Jalna for offence punishable under section 103(1) of Bharatiya Nyaya Sanhita (BNS).

2. Pointing to the date of arrest of applicant as 01.08.2021 and

taking this court through the FIR, learned counsel pointed out that apparently FIR dated 30.07.2024 is against unknown persons for committing murder of brother of informant. Present applicant, who is also younger brother of informant has been arrested on above date on allegation of committing murder of deceased brother. Learned counsel pointed out that, allegations are that, there was suspicion about illicit relations between deceased and wife of accused and in such backdrop, deceased is said to be done to death by strangulation. Learned counsel pointed out that, all three brothers lived together with their families. It is alleged that, there was consumption of liquor by all three brothers on the night of 29.07.2024. Deceased was found dead in the morning. It is pointed out that, only circumstance against applicant is some CCTV footage regarding applicant passing over the hotel, but he was not in the company of deceased brother. That, case is based on circumstantial evidence and theory of last seen together. That, one handkerchief is purported to be used is already discovered under section 27 of Evidence Act. Nothing more is yet to be recovered or discovered at his instance and as applicant is behind bars since almost six months, learned counsel prays for bail.

3. While opposing the application, learned APP pointed out that, informant, accused and deceased are brothers. That, they lived

together. That, informant and deceased initially sat to consume liquor. That, deceased was called later on and he also came with liquor. Learned APP pointed out that, informant Satish left as there was no male member in the family. Both, deceased and applicant did not return home same night and in the morning, deceased was found dead with ligature. Whereas, applicant was absconding. According to learned APP, there is electronic evidence in the form of CCTV footage and moreover, there is recovery of ligature at his instance. For all above reasons, bail application is opposed.

4. Perused the FIR, papers and charge-sheet. As pointed out, informant, deceased and applicant seems to be brothers, residing together on a makeshift temporary shed. Report is lodged by Satish that he and deceased together went to consume liquor at 6:00 p.m. on 29.07.2024 in the vicinity of Kharpudi Shivar. According to informant, deceased gave a call to applicant brother and informed about spot and they both were consuming liquor. It is informed that around 8:00 p.m., deceased came there with country liquor bottle and therefore informant left the spot questioning applicant why he left the family and came. That, around 9:30 p.m., wife of applicant informed that her husband has not come home and therefore informant Satish attempted to reach both brothers, i.e. applicant and deceased, but they were not reachable. In

spite of their search in the night on the said spot, they were not found. However, in the next morning, when he visited the said spot again, deceased was found lying dead in the *nala*. On above report, crime was registered against unknown persons for committing murder of deceased.

5. Present applicant was said to be arrested from his native. Theory set up by police machinery is that applicant suspected illicit relations of his wife with his deceased brother and therefore he was throttled and killed. Admittedly, there is no direct eye witness. Informant speaks of applicant his own brother arriving with liquor bottle and when informant left, applicant was alone in the company of deceased. In the morning, dead body was noticed, but applicant was said to be absconding. Investigating machinery has gathered CCTV footage and on the strength of the same, theory of last seen together has been evolved.

Taking above circumstances into consideration and that applicant was said to be absconding and traced and arrested at native, this court does not find it a fit case to grant relief at this stage at least.

6. The application stands rejected.

(ABHAY S. WAGHWASE, J.)