



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

**CRIMINAL APPEAL NO. 1087 OF 2024**

1] Samadhan Popat Gaikwad  
Age : 48 years, Occu.Labour,  
R/o. Shivour, Tq.Vaijapur,  
Dist.Aurangabad.

**...Appellant**

versus

1. State of Maharashtra

2. Laxman s/o.Bala Bagul,  
Age : 60 years, Occu.Labour  
R/o. Bhadali,Tq.Vaijapur,  
Dist.Aurangabad.

**...Respondents**

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Advocate for Appellant : Mr. Ghanekar Nilesh S.  
APP for Respondent/State : Mr.S.M.Ganachari  
Advocate for Respondent No.2 : Mrs. Anagha Vasantrao Rotte  
(Appointed Through Legal Aid)

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**CORAM : SHAILESH P. BRAHME, J.**

**DATE : 25<sup>th</sup> MARCH 2025**

**FINAL ORDER :**

1. Heard both sides finally. Learned APP tenders on record  
affidavit-in-reply.

2. By impugned order dated 11.12.2024 passed in Special Case

No.455 of 2024, application for regular bail is rejected by the Additional Sessions Judge-1, Vaijapur. Appellant is seeking enlargement on bail in Crime No. 0150 of 2024 registered with Shivur Police Station, District Aurangabad for offences punishable under Sections 302,201 r/w. 34 of I.P.C and Section 3(2)(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Respondent No.2/informant who is father of the deceased Savita lodged F.I.R on 27.04.2024 that his married daughter was missing since 19.04.2024. The missing report was lodged by her father-in-law. Her dead body was found on 27.04.2024. Appellant was arrested on 28.04.2024. Charge-sheet was filed on 25.06.2024.

4. On this backdrop, Mr.Ghanekar, learned counsel appearing for the appellant submits that there is no direct evidence against the appellant and only on the basis of statement of Mangal and panchnama under Section 27 of the Evidence Act,1872, he can not be denied bail. There is nothing on the record to connect the appellant to the overt act. He would submit that alleged extra-

marital relationship of the appellant with the deceased can not be the ground. There is absence of motive. He would further submit that the notice under Section 41(B) of Cr.P.C dated 28.04.2024 for arresting him is illegal. He would rely on order of enlarging co-accused Ajay on bail passed on 18.10.2024 in Criminal Appeal No.859 of 2024. Lastly it is submitted that it is incomprehensible as to why witnesses Mangal and Pournima did not disclose appellant's name from 19.04.1994 to 27.04.2024.

5. Learned APP submits that statements of Mangal and Pournima are clinching to connect the appellant to the crime. Father-in-law of the deceased promptly gave missing report. It is disclosed in the post-mortem report that the injuries are indicative of strangulation. It is further submitted that two-wheeler was procured from Shivaji by co-accused to carry the dead body. The chain of the events would indicate the culpability of the appellant.

6. Learned counsel Mrs.Anagha Rotte appearing for the Respondent No.2 submits that witness Pournima has stated the place of the incident which was usual place of meeting. The

memorandum under section 27 of Evidence Act underlines the discovery of the place which corroborates the prosecution story. The pieces of the bangles found at the spot of the incident, anklet and the bicycle forms chain to connect appellant to the crime. It is vehemently submitted that the custodial interrogation of the appellant is required because further investigation is needed. The location, call details record (C.D.R), final opinion of cause of death and D.N.A report are awaited. She would further submit that it would be impermissible for the appellant to raise challenge to notice under section 41(B) of Cr.P.C in the High Court. As the deceased was demanding money from the appellant, she was eliminated, is the motive surfacing from the investigation.

7. There is no direct evidence available in the present matter. It is a case of homicidal death. The appellant came to be arrested on 28.04.2024. The statements of Mangal and Pournima would indicate that appellant was having extra-marital relationship with the deceased. The husband of the deceased was addicted to liquor. These statements coupled with post-mortem report, memorandum under

section 27 do not take the case further. The relationship of the appellant can not be said to be the motive to eliminate the deceased. The motive is the missing link in the matter.

8. The spot of the incident was discovered under section 27 of the Evidence Act, 1872 and the witness Pournima also refers to the same spot as usual place of meeting of the appellant and the deceased. But this is not sufficient to prima-facie indicate act of strangulation by the appellant. Interestingly witnesses Mangal and Pournima were knowing the extra-marital affair between the appellant and the deceased but still no attempt is made by them to disclose it to the police from the date of missing i.e 19.04.2024 till recording of their statements. Thus, I do not find any strong circumstances to show involvement of the appellant in the offence.

9. Though, co-accused Ajay is released on bail that would not enure to the benefit of the appellant. The role attributed to Ajay is different than the role played by the appellant.

10. The appellant is behind bars since 28.04.2024. The charge-

sheet is filed on 25.06.2024. At this juncture there is no point in detaining him in jail. The proposed further investigation including C.D.R report,D.N.A report and final opinion would not be the ground to deny him bail.

11. Learned counsel Mr.Ghanekar appearing for the appellant relies on the judgment of the Division Bench of this Court in the matter of **Sachin Mahipati Nimbalkar vs. The State of Maharashtra** in Writ Petition (Stamp) No. 17029 of 2024 to buttress the submission that arrest of the appellant is illegal. He would also rely on the judgment of the Supreme Court in the matter of **Vihaan Kumar vs. State of haryana and Ors.** in Criminal Appeal No. 621 of 2025(Arising out of Special Leave Petition (Crl.) No. 13320 of 2024 to buttress that the illegality of the arrest can be agitated even after filing of charge-sheet. My attention is adverted to the notice under section 41(B) of Cr.P.C which is contended to be illegal. I do not propose to examine validity of arrest of the appellant at this stage. On merits I have already recorded findings that appellant is entitled to be released on bail. This point is kept open

and it can be agitated at the appropriate stage.

12. The impugned order is not only cryptic but absurd. It is unsustainable because paragraph no.7 of the order does not show any objective scrutiny. Hence, I pass following order :

### ORDER

(a) The Criminal Appeal is allowed.

(b) The impugned order is quashed and set aside.

(c) The Appellant shall be released on bail on furnishing P.R Bond of Rs.50,000/- with one solvent surety and he shall abide by following conditions :

(i) He shall not tamper prosecution witnesses or Informant.

(ii) He shall cooperate with the Investigating Officer, especially in case if further investigation is required or if he is called upon.

(iii) For the assistance rendered by the learned Counsel for Respondent No.2, the Legal Aid Committee shall quantify her fees.

**[ SHAILESH P. BRAHME, J.]**