

2023 SCC OnLine Bom 1552

In the High Court of Bombay
(BEFORE AMIT BORKAR, J.)

Hanumant Ashok Shinde ... Applicant;

Versus

State of Maharashtra ... Respondent.

Bail Application No. 1883 of 2023

Decided on July 27, 2023

Advocates who appeared in this case :

Ms. Sana Raees Khan a/w Mr. Aditya Parmar for the Applicant.

Mr. Amit, A. Palkar, APP for the State/Respondent.

The Judgment of the Court was delivered by

AMIT BORKAR, J.:— This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No. 99 of 2021, registered with Vishram Baug Police Station, for offences punishable under Section 201, 302, 392, 397, 44, and Section 37(1) (3), 135 of Maharashtra Police Act, read with section 4(25) 27 of Arms Act.

2. According to prosecution, based on missing complaint alleging that one Rosina Pansare Aka Kavita Chaudhari is missing from 8th August 2021, accordingly, an investigation was carried out.

3. According to prosecution, the applicant confessed that he was having love affair with the deceased. Applicant was residing her at Shakun Apartment in the rented premises. Because of refusal to perform marriage, there were frequent quarrels between the applicant and the deceased. It is alleged that on 12th August 2021, at about 8.00 pm, applicant killed the missing by throttling. He locked the room and went to Akkalkot. He returned on 13th August 2021. On 14th August 2021, he purchased two sacks from a shop at Nehru Chowk. He borrowed tempo from his friend. He thereafter, carry Scythe, knife, Hexa blade and sack in the tempo to the rented premises. On 15th August 2021, at about 00.30 hours he went in the room, he cut the body of the missing using Scythe, Knife, Hexa, blade. He put the head and two hands in the one sack and legs in another sack. Remaining body was wrapped in bed-sheet and blanket, he carried sacks containing body parts in tempo through Pirangut and Lavasa Road. He took the bed-sheet on the boundary of village Urawade.

4. After completion of the investigation the investigation agency filed charge-sheet. The applicant filed application for bail under Section 439

which came to be rejected by order dated 29th April 2020.

5. Learned counsel for the applicant submitted that the Panchanama under Section 27 of Indian Evidence Act, 1872, was done on 24th August 2021 between 10.55 hours to 11.25 hours, however the applicant was arrested after, Panchanama on 24th August 2021. The Panchanama is inadmissible. No blood stain were found either at the place of alleged incident or in the tempo. There is no DNA report to conclude that the body parts recovered were of missing Rozina Pansare Aka Kavita Chaudhari. There is no DNA sample of Class-I heir on record to match the DNA of body parts recovered. The case is based on circumstantial evidence. The applicant was arrested on 24th August 2021, therefore, case is made out for release on bail.

6. Per contra, learned APP submitted that the applicant and the deceased were staying together. There is evidence of Panchanama as per Panchanama as per Section 27 of Indian Evidence Act, 1872. The admissibility of such Panchanama needs to be adjudicated during trial. The deceased was killed in brutal manner by cutting her body parts and thrown at different places. The weapons used to cut the body were found at the place shown by the applicant. Therefore, the application needs to be rejected.

7. On perusal of the charge-sheet, it appears that no DNA sample collected by the prosecution of Class-I heirs of the deceased. The body parts recovered were completely decomposed. Prima facie it appears that there were no blood stains in the tempo or at a place where alleged crime of cutting body into different parts was committed. The admissibility of Panchanama under Section 27 needs to be adjudicated during trial as the prosecution needs to be given opportunity to lead evidence about exact time of the Panchanama and the arrest and its effect.

8. Considering totally decomposed body of the deceased, the identification of that needs to be decided during trial. However, prima facie, the material on record against the applicant is not sufficient at this stage to warrant his further detention.

9. The applicant was arrested on 24th August 2021. The charges are yet to be framed. It is unlikely that the trial will be over in near future. On overall consideration of facts, the applicant has made out a case for release on bail. Hence following order:

- a) The applicant Hanumant Ashok Shinde be released on bail in connection with C.R. No. 99 of 2021, registered with Vishram Baug Police Station, for offences punishable under Section 201, 302, 392, 397, 44 and Section 37(1)(3), 135 of Maharashtra Police Act, 1951 read with section 4 (25)/27 of Arms Act, 1959, on furnishing PR. bond in the amount of Rs. 25,000/- along with one or two sureties in the like amount.

- b) The applicant shall attend each and every date before the Trial Court unless specifically exempted by the Court.
 - c) The applicant shall mark his presence before the Investigation Officer on first Saturday of each month between 11.00 am to 2.00 pm till the completion of the trial.
 - d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court.
 - e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
10. The Bail Application stands disposed of in above terms. No costs.

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