


<p>MHKO060005592022</p> 	<p style="text-align: center;">ORDER PASSED BELOW EXH.4 IN SESSIONS CASE NO. <u>NO.69/2022.</u></p>
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This is second application filed by accused Bajrang @ Bajya Vasant Nandiwale for bail U/s. 439 of the Criminal Procedure Code in Crime No.162/2022, U/s.302,392,394,397,323 r.w. section 34 of the Indian Penal Code, registered at police station, Shirol.

2. Facts in brief are as under :-

Complainant-Arihant Chougule hails from village Haroli, Tal.- Shirol, Dist.- Kolhapur. However, complainant is residing with his maternal uncle Prakash Kakade at Hupari, Tal- Hatkanangle, Dist.- Kolhapur and he does work in his jewellery shop by name Ambai Jewellers. Complainant's maternal parents Champabai and Bhupal Kakade reside near Nandiwale colony, Chinchwad, Tal.- Shirol. Bhupal Kakade has undergone surgery to his right leg and therefore his leg can not bend from knee. His grandparents are old and they have problem of eye sight. On 30-07-2022, at about 5.30 to 6.00 p.m., complainant and his mother Mangal had been to meet Champabai and Bhupal at Chinchwad. Thereafter at about 6.30 p.m. complainant and his mother left Chinchwad and they reached at Haroli at 7.15 p.m.

3. According to complainant, at about 9.15 p.m. his mother received phone call from the mobile of her grand mother that her mother Champabai is in unconscious condition and her father Bhupal was shouting. Therefore, complainant and his mother went to Chinchwad. There they saw that Champabai was lying in the kitchen.

Her throat was tied by her saree. His grand-father Bhupal was shouting as – “कोणीतरी या, आम्हांला मदत करा.” On inquiry, complainant came to know that after dinner his grand-parents were watching TV. At that time, one unknown person came and raised quarrel with his grand-mother. That person gave kick on the chest of Bhupal. Due to this Bhupal fell on the ground. It is further revealed that the said person has stolen gold Manimangalsutra, Bormal and ear tops of Champabai and pressed her neck by her saree. Thereafter Champabai was taken to Sugar Factory Hospital at Shirol. Doctor advised to take her at Civil Hospital, Sangli and at Civil Hospital Sangli, doctor declared her as brought dead. Accordingly complainant lodged report in the police station. On the report, above mentioned crime is registered and police took up the same for investigation.

4. During investigation, various panchanamas were prepared. It was revealed that accused Nos. 1 and 2 in furtherance of their common intention entered in the house of deceased Champabai, beat her, stole her ornaments and committed her murder by pressing her throat by her saree. In the investigation, statements of accused U/s. 27 of the Indian Evidence Act were recorded. Ornaments were seized as per the statement of accused No.1. Some cash was seized at the instance of accused No.2, as as per his contention he and accused No.1 mortgaged the ear tops to one gold smith and he received the said amount from accused No.1 Prakash. During investigation ornaments were identified by the complainant. His supplementary statement was recorded. Test identification parade was conducted and after completion of investigation, chargesheet is filed against the accused.

5. Offences charged against the accused is exclusively triable by

the Court of Sessions. Hence, learned Judicial Magistrate First Class committed the case to this Court for trial.

6. Mr. S.S. Mhalungekar, advocate for accused has submitted that accused is innocent and he has not committed any crime. He admitted that earlier bail application of the accused was rejected. However, from perusal of the chargesheet no role is attributed to the accused. According to him only Rs.560/- are seized from the accused. The ornaments are seized as per the instance of accused No.1. He has further submitted that the police have recorded supplementary statement of the Bhupal Kakade and others and they have directly taken the name of both the accused. In the earlier statement of Bhupal Kakade, he has stated that only one person had entered in the house. He has also invited my attention towards the statements of witnesses. According to him, accused are falsely roped in the present crime. Test Identification parade is also not conducted as per the provisions of Criminal Manual. Complainant Arihant was called for test identification parade whereas he was not present at the time of incident. Thus, entire case of the prosecution is doubtful. According to him the case of prosecution is based on circumstantial evidence. The evidence of prosecution is that they recovered ornaments from the witness Shashikant Kale, Jeweler, which were mortgaged by accused No.1. The evidence of recovery is weak type of evidence. According to him accused is the permanent resident of give address and he is ready to abide by the conditions imposed by the Court. He prayed to release the accused on bail. In support of his contentions, he relied on *Sanjay Chandra Vs. CBI [2012 (1) B Cr C 214 (SC)]Maulana Mohd.Amir Rashadi Vs. State of UP and another 2012(2) B Cr C 36 SC, Tarkeshwar Goraknath Pandey Vs. State of Maharashtra 2011 All MR (Cri) 1608,*

7. Mr. U. M. Kulkarni, learned APP for the State has submitted that offence is serious, earlier bail application of this accused was rejected. Thus, present application is not maintainable. He has further submitted that if the accused is released on bail then he will abscond. He prayed to reject the application.

8. I have perused the chargesheet. Deceased Champabai and her husband Bupal were residing together. From the statement of Bhupal it reveals that while he and his wife watching television, one person came and demanded water to Champabai. Champabai gave water and scuffle arose between them. Champabai was declared as brought dead by hospital Sugar Factory, Shirol.

9. It is true that during investigation police arrested both the accused. Their separate statements under Section 27 of the Indian Evidence Act were recorded. It is to be noted that at the instance of statement of accused No.1, ear tops and Manimangalsutra were seized.

10. The story of prosecution is that both the accused in furtherance of their common intention committed murder of Champabai and stole her ornaments. They both went to witness Shashikant Kale and mortgaged the ornaments. The amount of Rs.560/- which was seized as per the statement of present accused, is alleged to be amount which is obtained by mortgaging ear tops.

11. However, if the statement of Shashikant Kale is perused, it reveals that on 31-07-2022 accused Prakash Nandiwale had come to his shop and he mortgaged ear tops and obtained Rs.4,000/- from him. In his register there is specific name of accused No.1. Said witness did not state that present accused had also come with accused No.1.

12. I am aware that second bail application is not maintainable but the facts of the present case are different. It is trite law that accused cannot be subjected pre-conviction detention if he is entitled for bail. In *Sanjay Chandra Vs. CBI [2012 (1) B Cr C 214 (SC)]* Hon'ble Supreme Court held that,

Deprivation of liberty only upon belief that accused will tamper witnesses if left at liberty would be quite contrary to concept of personal liberty enshrined in Constitution.

13. In *Maulana Mohd.Amir Rashadi Vs. State of UP and another 2012(2) B Cr C 36 SC*, Hon'ble Supreme Court held that,

Merely on the basis of criminal antecedents, bail can not be rejected. Court has to find out role of accused in case in which he/she has been charged and other circumstances such as possibility of fleeing away from jurisdiction of court etc.

14. In *Tarkeshwar Goraknath Pandey Vs. State of Maharashtra 2011 All MR (Cri) 1608*, Hon'ble Bombay High Court held that,

Merely because offences are serious, bail cannot be refused to applicant accused.

16. Revoting factual score of the present case there is recovery of Rs.560/- from the present accused. However, the witness Shashikant Kale did not state that present accused had accompanied with accused No.1. Further, accused is the permanent resident of given address and he undertakes to abide by the conditions imposed by the court. Hence, in such facts and circumstances of the case, I find that accused is entitled for bail. Therefore, the following order.

ORDER

- (1) Application is allowed.
- (2) Applicant/accused Bajrang @ Bajya Vasant Nandiwale be

released on execution of P.B. and S.B. of Rs.50,000/- in C.R.No.162/2022 offence punishable U/s.302,392,394,397,323 r.w. section 34 of the Indian Penal Code, registered at police station, Shirol on the condition that -

- (a) He shall not pressurize the complainant and witnesses in any manner.
 - (b) He shall attend the dates of the Court regularly unless exempted by the court.
- (3) Application is disposed off.

Jaysingpur.
Dt.: 30-06-2023.

(G.B. Gurao)
Special Judge, Jaysingpur.

Dictated on : 30-06-2023.
Transcribed on : 30-06-2023.
Date of sign : 30-06-2023.

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER.

30-06-2023.
UPLOADED DATE AND TIME

G.U.Joshi
NAME OF STENOGRAPHER

Name of the Judge	Shri.G.B. Gurao, Addl. Sessions Judge, Jaysingpur.
Date of pronouncement of Order	130-06-2023.
Order signed by P.O. on	30-06-2023.
Order uploaded on	30-06-2023.