MHKO080002862025	ORDER BELOW EXH.3 IN SESSIONS CASE NO. 19 OF 2025 (The State of Maharashtra Vs. Gurunath Bhairu Chougule)

1. Present application is filed under section 482 of B.N.S.S. The applicant was arrested in Crime No.132/2025 on 24/02/2025.

2. Learned advocate for the applicant submitted that the allegations made against the applicant that he committed the murder of victim i.e. mother of Maruti Sadashiv Dhanawade for gold ornament and destroyed the evidence. Actually, this applicant is not having relation or interrogation with mother of informant and any family members of informant or informant. Actually, the prosecution did not give explanation on what basis they were suspecting on this applicant. They tried to create certain evidence against the applicant which is not reliable if consider as it is. In spite of it, it is clear that the investigation was completed and charge-sheet is filed against this applicant. No direct evidence is present to show that this applicant was involved in committing murder of deceased i.e. mother of informant. Now it is very difficult for the Court to conduct the trial as early as possible. There are no chances that this applicant would create hurdle in the investigation as it was completed. Almost all the witnesses are the relatives of the informant. Therefore, there are very less chance that evidence would be tampered. The prosecution case depend on recovery of articles owned by the victim and last seen theory. But two witnesses are saying that they had seen the applicant with deceased at around 4 to 5 p.m. But both witness had seen him at different place. It shows that it is very

difficult that this applicant was present on two different places at a time. Also the identification of article recovered is not made. Hence, prima facie there is no material evidence to show that this articles recovered were owned by the deceased. Actually, recovery of articles as alleged from the accused is doubtful. Due to all these circumstances the application may be allowed. He relied on the case of **Wahid Vs. State Govt. of NCT of Delhi with Criminal Appeal No.202 of 2020], Ramreddy Rajeshkhanna Reddy Vs. State of Andhra Pradesh [AIR 2006 10 SCC 172], Dataram Singh vs. State of Uttar Pradesh AIR 2018 SC 980] and Prahlad Singh Bhati Vs. N.C.T. Delhi [AIR 2001 SC 1444]**.

3. Learned APP submitted that sufficient evidence is present against the accused. The charge-sheet filed against the accused for offence committing the murder of the victim. In that situation, it is very difficult to secure his presence. He committed the murder by strangulation for the purpose of ornaments. He killed the deceased very brutally. If this applicant is released on bail, there are chances that he would tamper the evidence. Also there are chances that he may put pressure on the witnesses to depose in his favour. Therefore, the application may be dismissed.

4. In case of **Wahid Vs. State Govt. of NCT of Delhi,** the Hon'ble Supreme Court held that -

> " In cases where the FIR is lodged against unknown persons, and the persons made accused are not known to the witnesses, material collected during investigation plays an important role to determine whether there is a credible case against the accused. In such type of cases, the courts have to meticulously examine the evidence regarding (a) how the investigating agency derived clue about the involvement of the accused in the crime; (b) the manner in which the accused was arrested; and (c)

> the manner in which the accused was identified. Apart from above, discovery/recovery of any looted article on the disclosure made by, or at the instance of, the accused, or from his possession, assumes importance to lend credence to the prosecution case".

5. In case of **Ramreddy Rajeshkhanna Reddy Vs. State of Andhra Pradesh**, it is held that -

> Para-27- " The last seen theory, furthermore, comes in to play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration".

> Paras-28. In State of **U.P. v. Satish (2005) 3 SCC 114)** this Court observed;

> "22. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and accused were seen together by witnesses Pws 3 and 5, in addition to the evidence of PW2".

6. There is no dispute that when the FIR is lodged against the unknown person in that situation there should be certain material to show that how the police were suspecting on the accused. Also there should not be a time gap between last seen together and deceased

found in the dead condition. But in above two authorities the Hon'ble Supreme Court came to the conclusion after considering the evidence given by the prosecution. On the other hand, in the case in hand the stage of the case is very preliminary. Therefore, above authorities are are not applicable for the purpose of bail.

7. On perusal of record, it finds that total prosecution case is depend on circumstantial evidence. Out of all the circumstances the strong circumstance as alleged by the prosecution is recovery of articles owned by the deceased at the instance of the accused and statement of the witnesses who had seen the accused with the deceased around 4.00 to 5.00 p.m. No doubt that dead body of the deceased was found next day at 8.30 a.m. It means dead body was found around more than 12 hours, when he was seen with the deceased. It cannot be said that said time gap is too high. But at this stage it is not necessary to decide the case on merit whether the evidence is prima facie correct or not. Prima facie it is required to see that prosecution case depend on the recovery panchnama and statement of witnesses who stated that he saw the accused with the deceased. If the applicant is released on bail, there are chances that he may put pressure on the witnesses who acted as a panch to recovery panchnama or the witness who would deposed before the court about the last seen theory.

8. In case of **Dataram Singh vs. State of Uttar Pradesh** the Hon'ble Supreme Court held that "grant of bail is rule and rejection is exception. But it is also held that it is the discretion of the Court it must be exercised judiciously and in a human manner and in compassionate".

9. Also in case of Prahlad Singh Bhati Vs. N.C.T. Delhi it is held that -

> " The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable of the witnesses being tampered with, the larger interest of the public or State and similar other considerations. It has also to be kept in mind that for the purpose of granting the bail the Legislature has used the words"reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stge, to have the evidence establishing the guilt of the accused beyond reasonable doubt" .

10. In the light of above authority it is necessary to consider the fact and circumstances of the case in hand. It is clear from the record that the deceased was died by the strangulation. The allegations made against the applicant that he committed murder of deceased due to the ornaments. Some of the ornaments were received at the instance of the accused. Whether that the evidence is sufficiently proved or not that would be a part of trial and merit. Also some witnesses stated that they had seen deceased with the accused around 12 to 15 hours before she found dead. In that situation, there are every chances of tampering of evidence. It is not necessary for the accused to put pressure on the total all the witnesses. He could tamper only the witnesses on recovery

panchnama and last seen theory. Due to all these reasons the application is not entitled to be allowed. Hence, the following order is passed.

O R D E R

The application is dismissed.

(O.R. Deshmukh)

Date:-22/07/2025. Additional Sessions Judge,
Gadhinglaj.