

ORDER BELOW EXH.11 IN SESSIONS CASE NO.88/2022

(State Vs. Abdul Yunus Shaikh)

1. The applicant/accused Abdul Yunus Shaikh, has filed this application for bail under Section 439 of the Criminal Procedure Code in Crime No. 59/2022 registered at MIDC Police Station, Latur for offence punishable under Sections 302 of I.P.C.
2. Read the application and the replay filed by learned PP at Exh.13. Heard learned counsel for the accused and Learned PP Shri S.V. Deshpande. Perused the police papers.
3. On the basis of the report lodged by Yakub Ismail Shaikh, the father of the deceased on 09/02/2022, Crime No. 59/2022 came to be registered against the accused. In the FIR it is stated that complainant's daughter Reshama was married with the accused in 2019. After some days of marriage, Reshama informed them that the accused used to make obscene/unnatural demands while committing sex and used to force her for performing sex many times in a day and when she refused for the same, he used to beat her. Thereafter, they tried to convince the accused, but in vain. He used to illtreat his daughter for his lust. Due to his ill-treatment before one and half month of the incident Reshama came to her maternal home for residence. On 03/02/2022, the accused come to his house and assaulted Reshama on the ground that she did not receive his phone call and by making allegations on her character. On 07/02/2022 at about 7.00 pm. the accused went to the hotel

where complainant's wife was working and threatened complainants' wife to send Reshama to his home by saying that he cannot sleep without her, and if she did not send her, he will kill both of them and went away. On 08/02/2022 at about 5.00 to 5.30 pm. the complainant received phone call of Adv. Gomchale that some incident has happened in his house and he was called immediately to the house. When he returned home many people were gathered at his house. Reshama was laying in injured dead condition. His neighbour Anita Sonawane informed him that the accused had come to his house at about 10.30 am in the absence of complainant and his wife. According to complainant the accused in absence of complainant and his wife had come to his house and assaulted Reshama by means of sharp-edged knife on her neck, chest, thigh, abdomen, face, both hands and other part of body by raising suspicion on her character and committed her murder.

4. Learned counsel for the accused has submitted that the accused has not committed any offence. He has been falsely implicated in this case. There was no any intention or motive on the part of the accused to commit murder. The knife has not been recovered from the accused. There is no prima facie evidence against the accused to connect him with the offence. The statement of Anita Sonavane, who had allegedly given information to the complainant has not been recorded by the I.O. The accused was not residing in the house of the deceased, therefore the presumption u/s. 106 of the Evidence Act is not attracted. Though the incident was occurred in thickly populated

locality, there is no eye witness of the incident forthcoming in this case. It is alleged that two years son was present at the time of incident, but there is no evidence of making any cries or shouts. The chain of circumstantial evidence has not been completed. The accused has been falsely implicated by the complainant and his family members with pre plan. The investigation is completed and the charge sheet is filed. The family of accused including son of 2 years is depend on him. He is ready to co-operate police machinery and obey the conditions of bail. Therefore, learned counsel for accused prayed for grant of bail to the applicant.

5. In support of his contention, he relied on the decision in **Navaneethakrisnan V/s. The State by Inspector of Police, Cri. Appeal No. 1134/2013, dated 16/04/2018 (SC)**, wherein it is observed that it is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstance so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accuse can be safely drawn and no other hypothesis against the guilt is possible. He further relied on the decision in **Nagendra Sah V/s the State of Bihar, Cr. Appeal No. 1903/2019 (SC) dated 14/09/2021**, wherein it is observed that in case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under section 106 of the Evidence Act is

not relevant at all. Reliance is also placed on the decision in Sri Janardhan Murasingh V/s The State of Tripura, Cri. A(J)13/2021, dated 06/02/2022(Tripura High Court).

6. The learned P.P. strongly opposed the application on the ground that the offence is serious antisocial offence of brutal murder of the wife of the accused by assaulting her by means of sharp-edged knife on vital parts of body. There is strong prima facie evidence against the accused. The weapon has been recovered from the spot of incident. The blood-stained clothes of the accused worn at the time of incident has been recovered as per the discovery statement of accused under sec. 27 of the Evidence Act. The statement of witnesses Prashant Paddature, Dhananjay Kombade, Nafisa Shaikh, Mehrun Shaikh and Surekha Pitale are recorded under sec. 164 of Cr. P.C. There was previous ill-treatment to the deceased by the accused. The PM Note and the photographs of the deceased show that the deceased had sustain 33 wounds and cut injuries by sharp edged weapon on vital part of the body. The two years boy was present there and his body was also stained with blood. If the applicant is granted bail, there is every possibility of tempering of the prosecution evidence and witnesses and commission of another serious offence by the accused. Further, there would be danger to the family of complainant. Therefore, learned PP prayed for rejection of the application.

7. I have gone through the record of the case and the police papers. From the FIR and the statement of witnesses it prima facie shows that there was ill-treatment to deceased

Rshama and she was residing at her maternal house. There were previous incidents of beating to her by suspecting on her character and threats to killing her to her mother by the accused. According to complainant and witnesses the accused in absence of the complainant and his wife had come to the house of complainant and assaulted Reshama by means of the knife on vital part of body and committed her murder by suspecting on her character. The knife has been recovered from the spot of incident. So also, the Aadhar card of the accused has been recovered from the spot of offence. The PM note shows that the deceased had sustained 33 incised wounds and cut injuries on vital part of body. The case is of brutal murder by means sharp edged knife. It appears that the blood-stained clothes of the accused worn at the time of incident has been recovered as per the discovery statement of the accused. The samples are sent to FSL and the report of blood samples and the muddemal is not yet received. There is strong prima facie evidence against the accused. The case is based on circumstantial evidence. Therefore, if the accused is released on bail there is every possibility of tempering of the prosecution evidence and witnesses. The possibility of commission of another serious offence and danger to complainant and the prosecution witnesses can not be ruled out. The offence is serious antisocial offence. The authorities cited by learned counsel for accused are decided on merits. Therefore, at this stage the authorities are not applicable to the present set of facts. Therefore, considering the nature, seriousness and gravity of the offence, the facts and

circumstances of the case and the larger interest of the society, the applicant is not entitled for grant of bail in such type of serious offence. Hence, the bail application deserves to be rejected. Hence, I proceed to pass the following order.

ORDER

- 1) The bail application Exh. 11 is rejected.
- 2) P. & D. in the open Court.

Date: 08.08.2022

(R. B. Rote)
Additional Sessions Judge,
Latur.
