

Order below Ex.25.
(State Vs. Bharat Bhuru Dhonge)

1] This is an application to grant regular bail in connection with Crime No.238/2021 dated 27.04.2021 for the offences punishable under Sections 302, 201, 120(B), 363, 364 of the Indian Penal Code, registered with Police Station, Khed.

2] Perused the application and written reply Ex.26 of the prosecution. Heard the Ld. Counsels for both the parties.

3] As per the case of prosecution, accused Bharat was having suspicion on wife accused Pushpa to have an extra marital relation with informant's son namely Mahesh. Therefore, accused Pushpa and Mahesh were beaten at the hands of accused Bharat on account of their illicit relations. Thereafter, Bharat alongwith wife Pushpa and family members migrated to his village Avhat.

4] On 03.04.2021 deceased Mahesh had been to ATM at 11.00 a.m. but did not return to the house. His mother i.e. informant Vandana tried to search Mahesh and also made phone call on his cell phone but it was switched off. Therefore, on 06.04.2021 missing complaint of Mahesh was filed. Thereafter, on 27.04.2021 she came to know from the person acquainted with Mahesh that, on 03.04.2021 they saw accused Bharat and three others on the motorcycle at Khed Bus Stand. She suspected that, accused Bharat might have done something with

her son Mahesh because of illicit relations with his wife Pushpa. On the basis of informant's statement Crime No.238/2021 came to be registered u/s.363 and 364 of Indian Penal Code.

5] During investigation, on 27.04.2021 applicant Bharat was arrested. On the basis of his memorandum the place was discovered where the dead body of Mahesh was buried. During the interrogation with applicant Bharat, it revealed that, co-accused Bhagwan, Dinesh and Pushpa were also instrumentally in killing Mahesh and buried his dead body. Accordingly, they came to be arrested by adding the offence of murder.

6] Applicant Bharat seeking the bail on the ground of parity, as the remaining accused having similar role, are released on bail. Before the incident the applicant left the village with children, due to illicit relations of his wife Pushpa with deceased Mahesh. Therefore, applicant cannot be considered to have committed the offence, in absence of the eye witness to the incident. The case is based on circumstantial evidence. There is no motive to commit the murder of the deceased. The statement of the informant, who is mother of the deceased, is not tallied with the statement of witness Kiran from whom she came to know the whereabouts of the deceased. There is no direct evidence with the prosecution to show the act, alleged to be occurred at the hands of the applicant. Moreover, no test identification parade is conducted. The applicant is behind bar

since last more than one year, having small children. Hence, considering the entire facts and the ground of parity, prayed to release on bail.

7] On the other hand, the learned APP has strongly objected with the contention that, the place where the dead body of deceased Mahesh was buried came to be identified at the instance of present applicant. The clothe on the person of the deceased is identified by the informant mother, as the body was totally discomposed. The applicant and deceased Mahesh were seen by witness Kiran on the motorcycle near Bus Stand Khed on the day when the deceased left the house. This is nothing but last seen together theory. Since prior to the incident, witness Kiran was knowing the deceased and the applicant, therefore, non-conducting of test identification parade does not fatal to the prosecution. Mere some variance in the statement of the informant and the witnesses, are not sufficient to get release the applicant on bail. The release of co-accused is based on different grounds. Therefore, no parity is applicable to the applicant. Hence, considering the facts, prayed to reject the application.

8] Perused the entire case record. It is pertinent to note that, the dead body of the deceased, as alleged was recovered on 27.04.2021 at the instance of the applicant vide his memorandum recorded u/s.27 of the Indian Evidence Act, from the isolated place situated in the Wakant Field, on Dhakale to

Pokhari road. As per the prosecution, deceased left the home on 03.04.2021 and since then he was missing. Therefore, the body was totally decomposed and hence, information regarding the cause of death is reserved by the medical officer in the postmortem report. However, the statement of the informant prima-facie transpired about an identification of the clothes on the person of the deceased. In such circumstances, at this stage it could be said that, the dead body, which is recovered at the instance of the applicant, was of the deceased.

9] Statement of witness Kiran Bhokte revealed that, on 03.04.2021 at about 8.15 p.m. he had been to medical store situated on Pabal road, Khed that time saw the applicant and the deceased on the motorcycle and therefore, on 27.04.2021 when the parents of the deceased had been to his house, he had disclosed the said fact. No doubt, the informant did not disclose the name of Kiran from whom she came to know that on the particular day he saw the applicant and the deceased together. It appears some variance but this fact itself is not sufficient to prima-facie disbelieve the prosecution story, to the extent of the applicant which is supported with his memorandum, who soon after arrested narrated before the police that, he is ready to show the place where the dead body of the deceased was buried and accordingly, in presence of Nayab Tahasildar the dead body was recovered from the spot in presence of panchas.

10] So far motive on the part of the applicant is concerned, record prima-facie revealed an illicit relation of his wife with deceased Mahesh. Admittedly, his wife Pushpa is the co-accused of the crime, who came to be released on bail. The reason behind the same is that, no motive came forward against co-accused Pushpa, when particularly, she was having such extra marital relation with the deceased. In the case in hand record prima-facie revealed that, there is a motive as the wife had having extra marital relation with the deceased and therefore, there might be probability to commit murder of the deceased and buried his dead body as stated above.

11] The investigating officer recovered instrument by which the death of the deceased was caused at the instance of co-accused Pooja. As per the case of prosecution, the applicant and co-accused initially assaulted the deceased by an iron rod in the room where co-accused Pushpa was residing and thereafter, they took him in the isolated place, where the applicant with the help of stole of his wife throttled the neck of the deceased and then buried his body. This fact indicates finger towards the applicant who assaulted the deceased by an iron rod and then throttled his neck by stole.

12] It is significant to note that, the applicant arrested on 27.04.2021 at about 4.36 p.m. and soon after, at about 5.00 p.m. he made voluntary statement to show the place where the dead body was buried. It seems that at that time he disclosed

before the police how the murder is committed and kept the articles. However, the investigating officer showed the recovery of articles at the instance of accused Pushpa who arrested later on. All these facts prima-facie shows the involvement of the applicant to commit the murder of the deceased and buried the dead body. The role of co-accused does not appear more than assistance to the applicant. Therefore, releasing the co-accused cannot be a ground of parity to get release the applicant, when particularly, the dead body recovered at his instance, who assaulted the deceased by iron rod and throttled the neck by stole. In such circumstances, the application deserves no consideration. With this, I proceed to pass the following order.

ORDER

Application is rejected.

Khed.

Date : 21.09.2022

Additional Sessions Judge,
Khed-Rajgurunagar, Dist- Pune.