

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1549 OF 2015**[Aba alias Mukesh Ramesh Baviskar Vs The State of Maharashtra]**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or
directions and
Registrar's orders

Court's or Judge's orders

Shri R.N.Dhorde, Senior Advocate h/f
Shri V.R.Dhorde, advocate for applicant
Shri D.R.Kale, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.**DATED : 16th April, 2015****PER COURT :-**

1] By the present application, the applicant is seeking his release on bail, in connection with Crime No. 30 of 2014, registered with Shani Peth police station Jalgaon, for the offences punishable under Sections 302, 452, 342, 506 r/w 34 of the Indian Penal Code.

2] I have heard Shri R.N.Dhorde, learned Senior counsel for the applicant and Shri D.R.Kale, learned Additional Public Prosecutor for the respondent/State.

3] The entire investigation is completed and charge sheet is already filed in the court of law. Even according to the prosecution case, the date of incident is 9.6.2014; whereas the first information report is dated 26.6.2014. Though in the first information report it has been pointed out by the first informant Ratnabai who is the mother of deceased Nikesh that due to the fear on earlier occasion she could not lodge the report with the police.

4] On 9.6.2014 itself Nikesh the deceased was admitted in the hospital of Dr. Bhangale. After the same, an M.L.C.

was sent from Dr. Bhangale's hospital to the police station Shani Peth, Jalgaon. On 9.6.2014 itself a requisition was sent to Dr. Bhangale by the A.S.I. Bhosale of police station Shani Peth, Jalgaon inquiring about the condition of the injured Nikesh as to whether he is able to give his statement. Accordingly, on 9.6.2014 at 11.45 a.m. statement of Nikesh the deceased is recorded. The said statement shows that on 9.6.2014 at 2.30 a.m. when he was proceeding to his house on a Pulsar motor cycle under the influence of some intoxicant, he lost balance of the motor cycle due to which he fell down and received injuries. His statement further reveals that thereafter his family members and Corporator of his ward admitted him to the hospital of Dr. Bhangale. Thus at the first opportunity deceased did not disclose anything adverse to the present applicant and/or any of the co-accused with the police. Subsequently, he was taken to one Ganpati hospital on 13.6.2014. He died at Ganpati hospital on 21.6.2014. From the admission at Ganpati hospital on 13.6.2014 till his death i.e. on 21.6.2014 no further statement of deceased is available on record attributing any overt act or any accusation against the present applicant.

5] After the death of Nikesh, in view of the intimation given by Dr. Shital Oswal of Ganpati Hospital, Jalgaon, accidental death was registered with police station Shani Peth, Jalgaon under Section 174 of the Code of Criminal Procedure vide A.D.No. 12 of 2014. The inquiry of the said accidental death was also conducted by the police authority. During the said inquiry, the statement of Ratnabai the first informant, the mother of the deceased is also recorded on 24.6.2014. The said statement shows that on 9.6.2014 when Nikesh came to his house in between 6.30 to 7 O' clock in the morning, that time he was limping. Upon that the inquiry was made to him by Ratnabai. Thereupon it was revealed to

her that due to accident he has suffered injury.

6] However, on 26.6.2014 the first information report is lodged when it is alleged by the first informant that on 9.6.2014 in the morning when Nikesh came to the house, that time he disclosed that he was mercilessly beaten by the present applicant and the co-accused by means of belt, kick and fist blows and wooden logs. It is also stated in the first information report that, that time present applicant and other co-accused by name Krishna also came to her house and they exerted threats and also assaulted on the deceased.

7] According to the prosecution case, there are independent eye witnesses by name Aakash Koli and Sham Patil and also one Popat Sonwane. These three witnesses claim that they have seen the assault on deceased by the present applicant and other co-accused. According to them, the deceased was mercilessly beaten by using the wooden logs and also by belt and fist and kick blows. Statements of these three witnesses are recorded on 26.6.2014 and 29.6.2014.

Worth to note is the postmortem report. The postmortem report does not show any injury by which it could be said that those injuries are caused either by wooden log or by belt. All the injuries are in the nature of abrasion alone. Further, the final opinion of cause of death is shown as septicemia due to pneumonia. The nature of injuries, prima facie, corroborate the version of deceased which was recorded during his life time when he was admitted at Dr. Bhangale's hospital.

8] Learned Prosecutor submitted that there is a recovery on the memorandum from the present applicant. According to him, the discovery being made by him, his clothes were recovered from his house. The recovery panchanama shows that the clothes were not having any blood stains.

9] Learned Prosecutor submitted that the applicant is having past criminal record. He pointed out that in one of the case registered against him in the State of Madhya Pradesh he has been convicted and is sentenced to life imprisonment, however, it has been pointed out that the Madhya Pradesh High Court has already released him on bail.

10] Criminal antecedent of the applicant, of course, weigh in the mind of the court while deciding the application for bail, however, for that, in the crime in which the applicant is claiming bail should have incriminating material against such person. Merely because the applicant is having past criminal record that by itself is not sufficient to reject the bail application, if there is no sufficient evidence in the crime in which he is claiming bail.

11] Looking to the fact that the statements of the eye witnesses, whose statements are recorded belatedly, show that deceased was beaten by the present applicant and other co-accused by wooden log, which is not supported by any legal evidence, prima facie, to me, at this stage the statements of such witnesses should not have any deciding factor for consideration of bail.

12] It is to be mentioned that the other accused Krishna against whom similar type of allegations are made in the first information report is also released by this court. The role ascribed to the present applicant and the said accused is almost identical. In that view, on the principle of parity also the present applicant is entitled for bail.

13] Further the entire investigation is over. The apprehension of the prosecution that the applicant will indulge himself into such acts which will cause prejudice to the prosecution can be taken care by imposing stringent conditions on him.

14] Upon instructions from the brother of the present applicant by name Kishor Baviskar, who is present in the court, learned counsel states that after release the applicant shall reside in Chopda city, District Jalgaon.

15] Hence following order.

ORDER

- (i) Application is allowed.
- (ii) Applicant-Aba alias Mukesh Ramesh Baviskar be released on bail on he executing P.R. bond of Rs. 50,000/- with two solvent sureties in the like amount, in connection with Crime No. 30 of 2014, registered with Shani Peth police station Jalgaon, for the offences punishable under Sections 302, 452, 342, 506 r/w 34 of the Indian Penal Code.
- (iii) The applicant-Aba alias mukesh Ramesh Baviskar shall not enter into the territorial limits of Jalgaon city for a period of two years or till the trial is over, whichever is earlier.
- (iv) The applicant shall furnish his residential address wherein he will be residing at Chopda city to the investigating officer within a period of 10 days from his release.
- (v) The applicant shall report the police station Chopda twice a week, preferably on every Sunday and Tuesday and he shall remain in the police station Chopda from 11.00 a.m. to 3.00 p.m. on those days.
- (vi) The applicant shall not leave city of Chopda without giving intimation to police station officer, Chopda.
- (vii) The applicant shall be entitled to enter the territorial jurisdiction of Jalgaon Municipal area only on the date of the trial.
- (viii) Needless to mention, the observations made in this order are prima facie in nature and are restricted to this application only and the learned Judge of the court below shall not get influenced himself by the said observations while deciding the matter on merits.

(ix) With these observations, Criminal Application is disposed of.

(V.M.DESHPANDE, J.)

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