

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3757 OF 2016

Pramod S/o Jayvanta Nirmal
Aged : 32 years, Occu.: Agriculture
& Business,
R/o Shivoor, Tq. Vaijapur,
Dist. Aurangabad

.. Applicant
(Orig. Accused No.2)

Vs.

The State of Maharashtra,
Through the Police Station Officer,
Kranti Chowk Police Station,
Aurangabad

.. Respondent

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Mr. V.D. Sapkal, Advocate with Mr. N.R. Bhavar, Advocate
for the applicant
Mr. S.D. Ghayal, APP for the respondent-State
Mr. Quadri Taher Ali, Advocate h/f Mr. Zia-Ul-Mustafa,
Advocate for complainant

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CORAM : N.W. SAMBRE, J.
DATE : 28/07/2016

ORDER :

Heard.

2. The applicant herein came to be arrested in
crime no. 23 of 2016 registered with Kranti Chowk
Police Station, Dist. Aurangabad for the offences

punishable under section 302 r/w. 34 of the Indian Penal Code and section 82 and 92 of the Bombay Prohibition Act alongwith co-accused – Prashant Mhaske.

3. Hence, this application for grant of regular bail after filing of the chargesheet.

4. The prosecution story, as appears against the accused / applicant, is as under :-

5. One Advocate Gujar Shah Ali Gauri, on 5/1/2016 lodged a complaint alleging that on 31/12/2015, his son Mehboob Gujar Gauri left home for celebrating 31st December with his friends. As he did not return on 1/1/2016, upon enquiry, he came to know from the police, through his brother Mohammad, that his son Mehboob was traced in the mortuary of the Government Medical Hospital, Aurangabad. After rituals, when he enquired with

the police about the cause of death, he came to know that the present applicant has murdered his son. As such, the crime in question came to be registered.

6. In the above background of prosecution story, learned counsel for the applicant Shri V.D. Sapkal would submit that the applicant is entitled to be released on bail, as the investigation in the matter is already complete as the chargesheet is filed. He would then submit that there is no material on record to connect the present applicant to the crime in question. According to him, upon reading of the material, as is reflected in the chargesheet, at the most it could be concluded that it is accused - Prashant Mhaske, who has murdered Mehboob.

7. So as to substantiate his contention, he would take me through the contents of the FIR, the

statement of the witnesses, namely, Kanchan Mata Meena Kulal, statement of Heena Ajim Shaikh and Bhimraj Bansode and Ambadas Hiwale, who are working in Mezza lodge, so as to submit that the applicant is falsely implicated in the crime.

8. Learned counsel for the applicant then would submit that upon perusal of the post-mortem report, it depicts that the cause of death of the applicant was 'cardiac tamponade due to rupture of left atrium' i.e. compression of the heart by accumulation of fluid in the part of the heart, resulting into rupture of left atrium, a part of heart.

9. He would then submit that the perusal of the papers would reflect that it is the other accused, who has assaulted the deceased and not the present applicant and looking to the age of the applicant, he needs to be released on bail.

10. It is required to be noted that the eye witnesses to the incident, namely, Kanchan in her statement, has stated that the present applicant alongwith co-accused Prashant Mhaske has assaulted the deceased Mehboob in front of Mezza lodge, where the said eye witness Kachan accompanied the accused persons. Before coming to Mezza lodge, deceased Mehboob was dropped by the accused persons i.e. the present applicant and accused - Prashant mid-way and before the applicant could reach the lodge where they booked a room for celebration of 31st December, alongwith their girl friends, in response to the comments by deceased Mehboob, the applicant has assaulted him. It is claimed that Kanchan has tried to intervene in the matter so as to stop the applicant alongwith accused - Prashant from beating deceased. Similar appears to be the version of Heena, an eye witness to the incident. Though, these two are the eye witnesses to the incident,

however, even if their testimony is to be doubted, still, there are independent witnesses, namely, Bhimraj Bansaode and Ambadas Hiwale, who speak of presence of deceased Mehboob at the hotel stair case and the present applicant alongwith co-accused – Prashant, assaulting deceased Mehboob, resulting into his fall. Their statements further speak that the applicant had shifted deceased Mehboob in the general room in the said Mezza lodge, however, having noticed that Mehboob was not responding, he shifted him to Government Medical Hospital. Apart from above, conduct of the accused persons, as is gathered in the statements of these two witnesses depicts that they tried to destroy evidence by deleting the video clips from the CCTV footage of the Mezza lodge. The overall scene, as is narrated by these eye witnesses speak of *prima facie* involvement of the accused in present crime.

11. There is strong evidence available against

the present applicant indicating his involvement in the crime in question. It is required to be noted that though it was well within the knowledge of the applicant, as is apparent from the statement of the eye witnesses, that deceased Mehboob was declared dead by the Doctors from the Government Medical Hospital, Aurangabad and this fact was informed to the applicant, still, the applicant has not taken steps in the matter qua intimating family members of deceased Mehboob about the said fact. Rather both the accused i.e. applicant and accused - Prashant have returned back to Mezza lodge and, thereafter, celebrated 31st December or 1st January midway, in the said hotel together. This speaks about the criminal mentality. There appears to be no remorse on the part of the accused persons, though they were knowing about the death of Mehboob because of their act of assault.

12. The above referred *prima facie* evidence, in

my opinion, dis-entitles the applicant for grant of bail. As such, the application fails and is rejected.

[N.W. SAMBRE]
JUDGE

arp/-