

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4306 of 2016

District : Dhule

Barku Baburao Kolpe,
Age : 28 years,
Occupation : Labour,
R/o. Tambapura,
Gawaliwada, Jalgaon.

.. Applicant.

versus

The State of Maharashtra.

.. Respondent.

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Mr. Joydeep Chatterji, Advocate, for the applicant.

*Mr. A.S. Shinde, Addl. Public Prosecutor, for
the respondent.*

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CORAM : A.M. BADAR, J.

DATE : 7TH SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 06/2016 registered with Dhule Taluka Police Station, District Dhule, for offences punishable under Sections 302, 201, read with Section 34 of the Indian Penal Code, by this application, is seeking his release on bail after filing of the charge-sheet.

2. Heard the learned Counsel appearing for the applicant / accused. By taking me through the charge-sheet, the learned Counsel for the applicant argued that the case of the prosecution is based on circumstantial evidence. The learned Counsel further argued that even if the charge-sheet is taken as it is, then also there is gap of 12 hours between the point of time at which the deceased was seen alive with the present applicant and the co-accused and the point of time at which said Govind Shankar Manore was found dead by the said of Nagpur-Surat Highway. The learned Counsel therefore submits that considering this weak nature of evidence against the present applicant, he is entitled to be enlarged on bail. The learned Counsel further argued that there is no motive with the applicant to commit the crime in question.

3. As against this, the learned Addl. Public Prosecutor is opposing the application by contending that the investigation has resulted in collecting the material which forms the chain of circumstantial evidence complete in all respect, pointing out the only hypothesis of the guilt of the applicant / accused in the crime in question and therefore it cannot be said that evidence against the applicant is weak in nature.

4. The crime in question is registered at the

instance of Rohidas s/o. Gangaram Patil. He reported on 05.01.2016 that at about 10.00 a.m. of 05.01.2016, he and his associate Sharad @ Pintu s/o. Bhagwan Patil saw dead body of unknown person lying by the side of Nagpur-Surat Highway No.6.

5. Report of post mortem examination of the said dead body, which was ultimately revealed to be that of Govind Manore, shows that there were 13 injuries on it which were ante mortem in nature. Cause of death is stated to be due to smothering.

6. Perusal of the charge-sheet goes to show that co-accused Ranjana Vijay Sardar was earning her livelihood by indulging in prostitution. Deceased Govind Manore was residing with her. According to the prosecution case, as Govind Manore (since deceased) was harassing co-accused Ranjana Sardar, she hatched a plan to eliminate him by taking aid of the present applicant.

7. Vandanabai Mohanlal Chavan is landlord of co-accused Ranjana Sardar. Her statement reveals that on 04.01.2016 at about 04.00 p.m., present applicant, co-accused Ranjana Sardar and Govind Manore (since deceased) had been to her house after consuming liquor. She further disclosed that they left by one motorcycle. Statement of Sunil s/o. Bhaskar Mahajan shows that at about 05.00 p.m. of

04.01.2016, present applicant, co-accused Ranjana Sardar and Govind Manore (since deceased) were together. Similar is the statement of Ratnabai w/o. Sunil Mahajan.

8. Vinod s/o. Kanhhyalal Rathod is serving as manager with Kuber Beer Bar. His statement reveals that at about 06.00 p.m. to 06.30 p.m. of 04.01.2016, present applicant along with co-accused Ranjana Sardar and Govind Manore (since deceased) had been to Kuber Beer Bar. After purchasing liquor from that Bar, they drank it outside the shop and started quarreling. Thereafter all of them proceeded towards Dhule by motorcycle.

9. Statement of Nandu s/o. Sahebrao Patil shows that at about 07.00 p.m. to 07.30 p.m. of 04.01.2016, present applicant as well as co-accused Ranjana Sardar and Govind Manore (since deceased) were quarreling by the side of the road. His statement reveals that accused persons were assaulting Govind Manore and then they left the spot by one motorcycle. Similar are statements of Rahul s/o. Narayan Patil and Kantilal s/o. Atmaram Patil which shows that deceased Govind Manore was in company of present applicant as well as co-accused Ranjana Sardar.

10. Bhagwan s/o. Shridhar Chaudhary is owner of Hotel at Mukti, Taluka & District Dhule. His

statement reveals that at about 09.00 p.m. to 09.30 p.m. of 04.01.2016, present applicant and co-accused Ranjana Sardar came to his hotel along with Govind Manore (since deceased). After having their meals, they came out of the hotel. Bhagwan Chaudhary further stated that the present applicant and co-accused Ranjana Sardar then started assaulting Govind Manore. Witness Bhagwan Chaudhary then intervened and thereafter Govind Manore slept on cot at the hotel. After some time, as stated by Bhagwan Chaudhary, present applicant as well as co-accused Ranjana Sardar came back and took Govind Manore (since deceased) on the motorcycle.

11. FIR reveals that thereafter Govind Manore was seen dead at about 10.00 a.m. of 05.01.2016. FIR shows that neck of the deceased was constricted by orange colour scarf. Statement of Bhagwan Chaudhary goes to show that orange colour scarf was worned by co-accused Ranjana Sardar. Charge-sheet as such shows that within 12 hours of the deceased lastly seen alive in company of the applicant as well as co-accused, he was found dead. The last seen theory comes into play when time gap between the point of time when the accused and the deceased were seen alive and when the deceased is found dead, is so small that possibility of any person other than the accused being author of crime becomes impossible. In the case in hand, the charge-sheet shows that from

afternoon of 04.01.2016, present applicant, co-accused Ranjana Sardar and deceased Govind Manore were consistently together till they were lastly seen alive by witness Bhagwan Chaudhary. Thereafter in the morning hours of 05.01.2016, informant saw Govind Manore as dead. Thus within few hours, when he was lastly seen alive in company of accused persons, Govind Manore was found to be dead.

12. In this view of the matter, it cannot be said that there is no prima facie case for the offence punishable under Section 302 of the Indian Penal Code against the present applicant. The offence alleged is punishable with either death or life imprisonment. No case for bail is made out.

13. The Application is accordingly rejected.

(A.M. BADAR)
JUDGE

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