

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.592 OF 2019

Sandip Rajaram Dhadve Vs. State of Maharashtra, through PSO P.S. Risod,
Tq. and Dist. Washim.

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

Court's or Judge's orders.

Mr. Anil Mardikar, Senior Advocate assisted by Mr. Ved
Deshpande and Mr. Rishabh Khemukha, Advocate for
applicant.

Mr. S.S. Doifode, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : SEPTEMBER 30, 2019

1. Heard Mr.Mardikar,learned Senior Counsel for
applicant and Mr. Doifode, learned Additional Public
Prosecutor for non applicant-State.

2. Applicant is apprehending his arrest in
connection with Crime No.7/2019 registered with Police
Station, Risod, Dist. Washim for an offence punishable under
Sections 143, 147, 148, 302, 506 of the Indian Penal Code.

3. The learned Senior Counsel for the applicant
submitted that at this stage it could not be said convincingly
said that the deceased Madan died homicidal death. He,
therefore, submitted that looking to the fact that
investigation is over and challan is presented before the
competent Court and the applicant, in view of the order

dated 29.08.2019, has attended the police station and joined investigation, the applicant be released on pre-arrest bail.

4. *Per-contra*, it is the submission of the learned Additional Public Prosecutor that the present application is a second application for pre-arrest bail. His previous application being Criminal Application (ABA) No.121/2019, was rejected. Applicant could not claim fresh consideration of his case by the Court. He submitted that custodial presence of the applicant is necessary for investigating into the matter further for tracing out the unknown assailants. He, therefore, submitted that the application be rejected.

5. The incident in questioned has occurred in the intervening night of 27.12.2018 and 28.12.2018 at village Haral, taluka Risod, district Washim. According to the prosecution, in the said incident, Madan son of Savitribai was assaulted by present applicant and his two brothers and three unknown persons. Madan died at Secura Hospital at Washim during his treatment. Though the death occurred on 28.12.2018, first information report was lodged on 09.01.2019, therefore obviously there is a delay in lodging in first information report. The delay is sought to be explained by first informant herself in the report itself. According to the explanation for lodging report at belatedly, it is stated in the first information report that after assault by the accused persons the first informant along with her son Vijay went Police Station, Risod and tried to lodge report however that

time it was informed by the Police Station Officer that after receipt of the postmortem report, the offence will be registered. It is also stated that though postmortem was conducted, on two to three occasions she went along with her son Vijay to Police Station, Risod however it was told that postmortem report was not received and therefore the Police Station Officer cannot register the offence. Therefore, on 05.01.2019, she gave a representation to Superintendent of Police, Washim wherein it was stated that if report is not registered then she will sit on hunger strike on 07.01.2019. Therefore on 09.01.2019 the Police Station Officer, Risod asked her to lodge report and accordingly the report was lodged. Normally, there would not have been any difficulty to accept the explanation at this stage had the learned Additional Public Prosecutor could point out the factum of submitting the representation by the first informant to the Superintendent of Police on 05.01.2019. After deliberation on this issue, the learned Additional Public Prosecutor could not point out the said representation to this Court. Therefore, at least prima facie lodging of first information report belatedly has its own impact while considering the application for pre-arrest bail.

6. From the first information report, it is clear that co-accused Kavita, wife of deceased Madan was released on bail. Kavita used to reside separately in neighbourhood of informant. According to the report, on 26.12.2018, deceased Madan gave Rs.1200/- to Kavita and demanded Rs.50/- for

his personal use. However, refusal on the part of Kavaita resulted into quarrel in between them. According to the prosecution case, Kavita then telephoned to her brother including present applicant and hatched conspiracy to kill Madan. According to the report, Madan himself heard the said conversation and narrated the first informant and her husband. Therefore, they asked Madan to sleep in their house however has not given attention to them. He slept in tractor-trolley which was parked outside the house of first informant. According to the report, in between 12:00 to 12:30 in the night she heard noise of shouting. Therefore, she opened the door and noticed the present applicant, co-accused Vilas Dhadve including one Sunil and three unknown persons along with Kavita. That time, on the say of accused Kavita, present applicant, Vilas and Sunil dragged Madan from the trolley and then thrown him on the stone. At that time, the other persons assaulted by means of sticks, kicks and fist blows. Though first informant pleaded that Madan should not be assaulted, all the accused poured cold water on Madan and assaulted. Thereafter Madan was dragged till his house and in front of his house he was again assaulted and then thrown in his house. According to the report, when she tried to gain entry in the house of Madan since he was thrown in the house by the accused persons, his wife Kavita did not allow the first informant to enter in the house. On the next day Kavita admitted Madan in the Secura Hospital and ultimately he died.

7. At the time of death of Madan in the hospital, first informant or her son were not present. As per the accidental death proceedings the death of Madan was in the morning hours of 28.12.2018.

8. Insofar as submission of the learned Additional Public Prosecutor for the State that present is the second bail application and previously this Court has rejected his application for pre-arrest, every accused is having right to file successive bail applications for consideration if such accused could point out to the Court change in the circumstance at the time of consideration of the bail application. Admittedly, the first bail application was rejected and at that time charge-sheet was not filed or the entire investigation papers were not placed before the Court as it could be seen from the order dated 26.02.2019 (Coram:M.G. Giratkar, J.) and application of the applicant was rejected only on the statements made in the first information report.

9. In my opinion, filing of charge-sheet will definitely be a change in the circumstance inasmuch as after filing of the charge-sheet, the prosecution case is well crystallized and it is always open for the accused to point out the materials containing the in the charge-sheet for consideration of his prayer for bail either pre-arrest or regular.

10. Charge-sheet would show that on 07.01.2019

Police Station Officer, Risod Dist. Washim gave a communication to the Medical Officer of Secura Hospital, Washim and sought information about the condition of the patient (Madan) since his relatives have expressed suspicion. In pursuant to the said, charge-sheet would show detailed communications along with various reports of various tests conducted at Secura Hospital. At page 144 of the compilation there is an observation at the hands of doctor that the deceased was alcoholic. This observation of the doctor also gains corroboration from statement of Taramati, Satyabhan and Sakharam, who are the neighbours of Madan that there used to be quarrels in between deceased and his wife Kavita on account of demand of money for consumption of liquor.

11. Learned Senior Counsel invited my attention to page 160 of the compilation i.e. three documents of the Secura Hospital which give the cause of death, which are reproduced below:-

“Cause of death – chronic alcoholic c CVA (large Acute infarct in the Lt fronto – Temporo - parieto occipital Region & Thalamo Ganglia capsular region causing mass effect c midline shift Rt by 1.5 cm c SDH in the Lt fronto parietal convexity c coma c Aspiration pneumonia c Respiratory failure c CRA”

He also invited my attention to CT Scan of brain of the deceased which is available at page 162 of compilation, findings of the said are as follow :-

“The study shows large acute infarct in the left fronto-temporo-parieto-occipital region and thalamo-ganglia

capsular region causing mass effect and midline shift right by 1.5 cm.”

In CT Scan no fracture to the skull was noticed.

12. Postmortem findings allowed autopsy surgeon to give opinion about death though final opinion is reserved for receipt of viscera report. Though the said opinion is not final. it appears corresponding to the opinion expressed by the doctors at Secura Hospital about the cause of death of deceased Madan.

Learned Senior Counsel pointed out Merriam-Webster's Collegiate Dictionary, Eleventh Edition to point out which is mean by infarct it is read as under -

“infarct : an area of necrosis in a tissue or organ resulting from obstruction of the local circulation by a thrombus or embolus.”

He also pointed out from Harrison's Principles of Internal Medicine, Volume II, 16th Edition, what is mean by Cerebral ischemia, it is read as under :-

“Cerebral ischemia is caused by a reduction in blood flow that lasts longer than several seconds. Neurologic symptoms are manifest within seconds because neurons lack glycogen, so energy failure is rapid. ”

13. The pathological reports of Madan are also available in the charge-sheet. The tests were conducted at Secura Hospital and blood test report is at page 141 of the compilation and it shows that at the time of conducting

pathology test, observation of hemoglobin was found as 4.1 whereas reference range is 12.5 to 17.5.

14. It is to be noted that initially the brother of the present applicant by name Sunil was also dragged into first information report. Not only he was dragged but there were specific allegations against Sunil like the present applicant. However, during the course of investigation the investigating officer found that said Sunil who is working as driver in the Maharashtra State Road Transport Corporation was far away from village Haral and therefore he was discharged and no charge-sheet was presented against him. That shows that the first informant is having the tendency of implicating and roping the brother of her daughter-in-law falsely.

15. As per first information report the deceased was assaulted brutally however except one abrasion on the back, there is no surface injury. Even there is no corresponding injury to the head leave apart that there is no fracture to the skull though the deceased was thrown on a 10 kg. stone as per the prosecution which is seized from the spot.

16. Worth to mention that though first information report it was also reported that 2-3 unknown persons also assaulted on deceased by means of sticks. However, the charge-sheet is filed only against the widow of the deceased and her brothers. According to the learned Additional Public Prosecutor the custodial presence of the present applicant is

required to trace out the names of those unknown persons.

17. I am afraid, the said can be a reason for giving custodial presence of the applicant for a simple reason that applicant's two brothers Vilas and Gopal not only face police custody remand but also they are still in magisterial custody remand and learned Additional Public Prosecutor could not point any investigation for tracing out unknown persons. In this view of the matter, in my opinion, the said cannot be the reason to deny pre-arrest bail.

18. In view of the order dated 29.08.2019 passed by this Court, the applicant has attended the investigating officer from 01.09.2019 to 07.09.2019 and was with the investigating officer from 11:00 a.m. till 05:00 p.m. This aspect is not denied by the learned Additional Public Prosecutor, from instructions received from the investigating officer. In this case there is no recovery to be made from the present applicant.

19. *Prima facie* there is a possibility that the deceased might have died natural death though it will always open for the prosecution to prove otherwise during the trial.

On the backdrop of above discussion, I pass the following order.

ORDER

(i) The application is allowed.

(ii) In the event of arrest in connection with Crime No.7/2019 registered with Police Station, Risod, Dist. Washim for an offence punishable under Sections 143, 147, 148, 302, 506 of the Indian Penal Code, applicant- Sandip Rajaram Dhadve be released on bail on he executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Risod Dist. Washim once in a week i.e. on Sunday and shall remain with the investigating officer between 11:00 a.m. to 02:00 p.m till culmination of trial.

(iv) All the observations made in this order are made only for deciding the present application *qua* the present applicant. The learned Judge of the trial Court before whom the trial will be conducted shall not get influenced by observations made in this order and shall independently decide the case, in accordance with law.

The application is disposed of.

JUDGE

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