

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 BAIL APPLICATION NO. 765 OF 2020

NANASAHEB S/O ARJUN UPADE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. P. P. More
APP for Respondent-State : Mr. S.P. Deshmukh
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CORAM : V. K. JADHAV, J.
DATED : 8th OCTOBER, 2020

PER COURT:-

1. The applicant is seeking bail in connection with crime No. 512 of 2019 registered with Renapur police station, District Latur for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B of I.P.C. His Criminal Misc. application bearing No. 144 of 2020 with similar prayer came to be rejected by the learned I/C. Additional Sessions Judge-3, Latur vide order dated 15.5.2020.

2. Learned counsel for the applicant submits that investigation is over and the charge sheet has been submitted. Learned counsel submits that though the incident had taken in the morning time at about 5.30 a.m. on 14.12.2019, the complaint came to be lodged belatedly by expressing doubts against the present applicant giving reference to some earlier dispute. Learned counsel submits that one Krishnakumar @ Kumar Rohidas Sasane is the only eye witness to the alleged incident. Learned counsel submits that so called eye witness though witnessed the actual incident on 14.12.2019 in the

morning time and though he is related to the family of deceased, he has failed to disclose the said incident to anybody for a considerable time. Learned counsel submits that witness Krishnakumar Sasane is a got up witness and afterthought he has given his statement involving the applicant and other co-accused persons in the commission of crime. Learned counsel submits that except this witness, there is no incriminating evidence against the applicant. Learned counsel submits that the applicant has been falsely implicated due to the political enmity. Learned counsel submits that on the other hand, at the relevant time, the applicant was at different place and he is having plea of alibi to establish, in all probability, that at the time of alleged incident, he could not have been remain present at the spot of alleged incident. The applicant would establish his defence of alibi during trial. Learned counsel submits that there is no recovery at the instance of the applicant. Even assuming that witness Krishnakumar Sasane has made allegations against the applicant, however, it appears that general allegations have been made about the assault and only it is stated that the present applicant was armed with wooden log. Learned counsel submits that even no specific role has been ascribed to the applicant by the said so called eye witness Krishnakumar Sasane. Learned counsel submits that said witness Krishnakumar Sasane, being a close relative of the family of deceased, could have disclosed the incident immediately before lodging the complaint. Even his statement came to be recorded belatedly without explaining the delay. Learned

counsel submits that even witness Krishnakumar Sasane has not disclosed the actual incident of assault to witness Murlidhar and simply told him about dead body of deceased Santosh lying at a particular spot. Learned counsel submits that the applicant has a fixed place of residence. He is available for trial. The applicant is ready to abide the conditions if imposed by this Court, including the condition as not to enter within the limits of village Palshi, Tq. Renapur, District Latur till conclusion of trial. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that there is eye witness to the incident and at this stage marshaling of evidence in the manner as submitted by the learned counsel for the applicant should not be encouraged. Learned A.P.P. submits that said witness Krishnakumar is a young boy and he was scared due to the said assault in the broad day light. Learned A.P.P. submits that even witness Krishnakumar has also explained about it in his statement itself. Witness Krishnakumar has also stated that he got frightened noticing the said incident and therefore, did not disclose the incident to anybody for some time. Learned A.P.P. submits that apart from the said eye witness Krishnakumar, there are two more witnesses. Even witness Balaji Narayan Upade states that he woke up in the morning on 14.12.2019 for urinal purpose and at that time he saw that the present applicant alongwith co-accused persons proceeding in some direction and out of them, co-accused

Charan was armed with weapon axe and there was something in the armpit of the applicant. Learned A.P.P. submits that one more witness Rajabhau Deorao Jadhav had been to his land early in the morning on 14.12.2019 and at about 6.00 a.m. he has seen some persons, including the present applicant, running from the village towards Iti-Lakhmapur road and out of those four persons, one person was the applicant and three other persons were his sons. He has further stated that those sons viz. Dagdu and Shravan were armed with sword. Learned A.P.P. submits that there are 10 external injuries on the person of deceased and during internal examination, it is recorded that multiple deep injuries on head are present. According to Medical Officer, the cause of death is due to multiple injuries on head and body. Learned A.P.P. submits that deceased was mercilessly beaten by the assailants including the applicant. *Prima facie*, there is strong case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of charge sheet, it appears that in respect of incident occurred in the morning, at about 11.00 a.m. the complaint came to be lodged by the real brother of deceased expressing his doubts against the applicant and others by referring some earlier incidents indicating political enmity between the deceased and present applicant. Though it appears that the statement of one eye witness Krishnakumar Sasane came to be recorded on 16.12.2019, however,

he has explained in his statement itself that he got frightened because of the said incident witnessed by him and after regaining the courage, had disclosed the incident to the informant. I have carefully gone through the statement of witness Krishnakumar Sasane, in which he has stated that on 14.12.2019 at about 4.30 to 4.45 a.m. he had been to his own field alongwith his relative Murlidhar Shinde. It appears that there is common pipeline for watering the crops from the well situated in the agricultural field of deceased Santosh. According to witness Krishnakumar, he therefore, went towards the said well for starting the electric motor and at that time around 5.30 a.m. he heard the voice of deceased Santosh as "Don't beat me, henceforth I will not do anything". Thus, witness Krishnakumar rushed towards the said voice and noticed that the applicant alongwith co-accused armed with deadly weapons like sword, axe, wooden log, were extending beatings to the deceased. Witness Krishnakumar out of fear has not disclosed the incident to anybody including his relative Murlidhar, who had accompanied him in the field.

5. On perusal of the statement of witness Murlidhar, it appears that witness Murlidhar and witness Krishnakumar had been to their lands at about 4.30 to 4.45 a.m. for watering the crops. He has further explained that he stayed in his own land, however, witness Krishnakumar had been to the land of deceased Santosh for starting electric motor installed on the well situated in the agricultural land of

deceased Santosh. He has further explained that witness Krishnakumar returned to their agricultural land after some time and he was in frightened state of mind. He has explained that witness Krishnakumar out of fear has not disclosed the incident to anybody immediately. Apart from this, there are two more witnesses as pointed out by learned A.P.P. who have seen the present applicant alongwith other accused prior to the incident and post incident.

6. Perused the postmortem report, particularly the external injuries on the person of the deceased and injuries noted during internal examination. It appears that the deceased was mercilessly beaten. As per the final cause of death, deceased died due to multiple injuries on head and body. There is *prima facie* strong case against the applicant. Learned A.P.P. has also pointed out that there is criminal history. There is another crime registered against the applicant with Renapur police station for the offence punishable under Section 326 etc. Thus, considering the entire aspects of the case, I am not inclined to release the applicant on bail. Hence the following order:-

O R D E R

Application is hereby rejected.

(V. K. JADHAV, J.)

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