

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

40 BAIL APPLICATION NO.977 OF 2020

DADASAHEB S/O. SUKHDEO CHOUDHARI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Gaware Niteen V.
APP for Respondent-State : Mr. S. P. Deshmukh
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CORAM : V. K. JADHAV, J.
DATE : 19.10.2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.205 of 2020 registered with Shirdi Police Station, District Ahmednagar for the offences punishable under Sections 302, 201 of the IPC. His application with similar prayer came to be rejected by the Additional Sessions Judge, Kopargaon, vide order dated 05.08.2020 in Criminal Bail Application No.216 of 2020.

2. The learned counsel for the applicant submits that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. The learned counsel submits that even there is no motive for the

applicant to commit the murder of the deceased. The learned counsel submits that in terms of the confessional statement of co-accused Somnath so also the present applicant though which are not admissible in evidence, it appears that co-accused Somnath was responsible for the incident in question and even there is no whisper about the presence of the present applicant either with the deceased or at the alleged spot of incident. The learned counsel for the applicant submits that there is recovery of weapon, iron angle at the instance of the applicant, during the course of the investigation and there are blood stains on the said angle. However, the deceased was neither seen alive lastly in the company of the applicant nor there is further connecting evidence against the applicant for the commission of the murder by using the said weapon, iron angle. The learned counsel submits that the applicant has a fixed place of residence. There are no antecedents. The applicant is easily available for trial. The applicant may be released on bail.

3. The learned APP has strongly resisted the application on the ground that though the prosecution case rests upon the circumstantial evidence, however, there is evidence to the

extent that the deceased had taken the meals in the hotel of the present applicant in the fateful night and thereafter he again came to the hotel, demanded one bottle of beer. It has further revealed during the course of the investigation that on account of said demand of bottle of the beer, at odd night times, the quarrel had taken place and in the said quarrel, the applicant and co-accused Somnath had committed the murder of deceased. The learned APP submits that there is recovery of the iron angle at the instance of the present applicant having blood stains over it and the C.A. report is still awaited. The learned APP submits that even the Medical Officer on making a specific query by the Investigating Officer in this regard, has given the opinion that the injuries as mentioned in column No.17 of the Post Mortem Report are possible by the weapon, iron angle, seized during the course of the investigation at the instance of the present applicant. The learned APP submits that *prima facie*, there is a 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 the charge-sheet, it appears that the prosecution case entirely rests upon circumstantial evidence. I

hardly find any motive for the applicant to commit the murder of the deceased. Apart from this, most of the witnesses in their respective police statements, on the basis of hear say information, stated about the murder of deceased allegedly committed by the applicant along with co-accused Somnath. It further appears that there are witnesses to the effect that the deceased had taken the meals in the night, in the hotel of the applicant, however, after taking the said meals, the deceased along with his friends left the hotel. It further appears that after some time, deceased had alone returned to the hotel and demanded one bottle of beer which co-accused Somnath has refused. Except this evidence, there is no evidence as against the applicant. It has not been revealed during the course of investigation as to how deceased died and who is responsible for his murder except the confessional statement of co-accused Somnath, which is also not admissbile since recorded before the police. Even on perusal of the said confessional statement of co-accused Somnath, it appears that co-accused Somnath has admitted his guilt and according to him, he is alone responsible for committing murder of the deceased. It thus appears that except the recovery of the said weapon, iron angle

allegedly used in the assault having some blood stains, there is no further connecting evidence against the applicant. Even assuming that there are blood stains over the said weapon, iron angle having the blood group of the deceased, however, there is no further connecting evidence against the applicant, so far as the said recovery of the iron angle is concerned. Thus, considering the entire aspect of the case, in my considered opinion, the case is made out for grant of bail. There are no antecedents. The applicant is having fixed place of residence. The applicant is easily available for trial. Hence, by imposing certain condition, I am inclined to release the applicant on bail. Hence following order :

ORDER

1. The application is hereby allowed.
2. The applicant DADASAHEB S/O. SUKHDEO CHOUDHARI in connection with Crime No.205 of 2020 registered with Shirdi Police Station, District Ahmednagar for the offences punishable under Sections 302, 201 of the IPC, be released on bail on furnishing PB. of Rs.20,000/-(Rupees Twenty Thousand only) with one solvent surety of the like amount on the following condition :-

a] The applicant shall not tamper with the prosecution evidence in any manner.

3. The application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-