

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 BAIL APPLICATION NO. 1014 OF 2020

KARAN S/O KALYAN SALE
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Abhaysingh K. Bhosale
APP for Respondent-State : Mr. A. S. Shinde
Advocate for the Informant : Mr. A. R. Borulkar

.....

CORAM : V. K. JADHAV, J.
DATED : 13TH OCTOBER, 2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No. 257 of 2020 registered with MIDC Waluj Police Station, District Aurangabad for the offence punishable under Sections 302 and 120-B of IPC. His application with similar prayer bearing Bail Petition No. 885 of 2020 came to be rejected by the Additional Sessions Judge, Aurangabad vide order dated 25.08.2020.

2. Learned counsel for the applicant submits that the investigation is over and the charge sheet has been submitted. As it appears from the allegations made in the
vre/-

complaint and as it has been revealed during the course of investigation, that there is enmity in between the persons from Pradhan family on one side and Sale and Dahatonde family on the other side. Learned counsel submits that the informant had rushed towards the spot due to the information given to him by witness Mahesh Shingote. It further appears from the allegations made in the complaint that the informant had requested Mahesh Shingote to keep a watch on his brother deceased Yogesh because, on account of the previous enmity, deceased Yogesh was likely to be assaulted by the accused persons. Learned counsel submits that witness Mahesh Shingote in his police statement has not referred name of the present applicant as one of the assailant. Witness Mahesh Shingote has ascribed the role entirely to co-accused Jitu Dahatonde and Vikas Gaikwad. Learned counsel submits that Mahesh Shingote ran towards the house of deceased Yogesh and informed the complainant Ganesh Pradhan (real brother of deceased Yogesh) and one Sachin about the said incident of beating. Learned counsel submits that almost all the witnesses have referred the

vre/-

names of co-accused Jitu Dahatonde and Vikas Gaikwad as the assailants. Learned counsel submits that the incident has been recorded in the CCTV camera installed at Sara Sarthak Apartment, Sara Sangam Apartment and at the house of one Anil Shantilal Chordiya. There is a transcript panchanama drawn during the course of investigation. Learned counsel submits that camera no.5 installed at Sara Sarthak Apartment has recorded the actual incident wherein the presence of co-accused Jitu @ Jitendra Haribhau Dahatonde, co-accused Vikas Gaikwad and deceased Yogesh has been marked and recorded. Learned counsel submits that on account of previous enmity, the informant has added the name of the present applicant as one of the assailants in commission of the crime. Learned counsel submits that during the course of investigation, nothing has been seized from the possession of the applicant, nor anything has been seized at his instance. The applicant has a fixed place of residence. He is available for trial. The applicant is ready to furnish surety and also ready to abide the conditions, if

vre/-

imposed by this Court. Learned counsel submits that the applicant may be released on bail.

3. Learned APP, assisted by learned counsel Mr. Borulkar, has strongly resisted the application on the ground that the complainant Ganesh, who happened to be the real brother of deceased Yogesh, has referred the name of the applicant as one of the assailants and it has been specifically alleged that the present applicant along with other co-accused persons had extended beating to the deceased with the help of stones on his head and legs. Learned APP submits that witness Jitendra Suryabhan Jadhav has lastly seen the deceased alive in the company of the co-accused persons and the applicant at about 12.15 p.m. on the date of the incident. Learned APP submits that immediately after the incident, deceased Yogesh in injured condition made an oral dying declaration before witness Ajay Somnath Pradhan referring the name of the applicant and one co-accused Madya as the persons behind the assault and co-accused Jitya and Vikas assaulted him in pursuance to the said plan. Learned APP submits that the

vre/-

charge under Section 120-B of IPC has also been leveled against the accused persons. *Prima facie* there is a 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 the charge sheet, it appears that on 17.05.2020 at about 3.00 p.m., when the informant Ganesh along with his brother deceased Yogesh was in the house, co-accused Vishal Fate @ Madya came to the house and asked deceased Yogesh to make a phone call to co-accused Jitu Dahatonde. After some time, co-accused Vikas and Jitu came to the house of the informant on motorcycle and asked deceased Yogesh to come along with them. The informant Ganesh has further stated that thereafter deceased Yogesh went on his scooty towards Annabhau Sathe Chowk following co-accused Jitu and Vikas. Thereupon, suspecting about conspiracy on account of the previous enmity, the informant had requested witness Mahesh Shingote to follow deceased Yogesh and keep a watch on his activities. After

vre/-

some time, Mahesh Shingote informed the informant that the accused persons, including the present applicant, were beating deceased Yogesh in Annabhau Sathe Chowk. Thereafter, the informant and his cousin Sachin rushed towards Annabhau Sathe Chowk. In view of the above allegations, I have carefully perused the statement of witness Mahesh Shingote. It appears that witness Mahesh Shingote had witnessed the actual incident. Even at 3.00 p.m. witness Mahesh Shingote had requested Yogesh, who was consuming liquor in the company of co-accused Madya, to return to the house and thereafter, deceased Yogesh started his scooty and proceeded towards his house. Witness Mahesh Shingote has further stated in his statement that meanwhile, co-accused Jitu Dahatonde and Vikas Gaikwad came there on one another scooty and stopped deceased Yogesh. It further appears from his statement that initially, co-accused Jitu Dahatonde had slapped below the ear of deceased Yogesh and when deceased Yogesh was getting down from his scooty, co-accused Vikas Gaikwad had given a blow of knife on the ribs of deceased Yogesh. Thus, deceased Yogesh fell

vre/-

down on the road. It has been further stated by this witness that thereafter, co-accused Jitu Dahatonde and Vikas Gaikwad lifted the stones lying near the spot and extended beating to deceased Yogesh. Witness Mahesh Shingote has nowhere referred the name of the present applicant. Similarly, the witnesses to the incident referred the names of co-accused Jitu Dahatonde and Vikas Gaikwad as the assailants. I have also carefully gone through the transcript panchanama of the CCTV footage recorded during the investigation. It appears that in camera no.5 installed in Sara Sarthak Apartment at Annabhau Sathe Chowk, Wadgaon Kolhati, the actual incident of assault found to be recorded. It appears that in the said CCTV footage, presence of deceased Yogesh and two accused persons, namely, Jitu @ Jitendra Haribhau Dahatonde and co-accused Vikas Suresh Gaikwad has only been marked. It has been recorded in the said camera no.5 that co-accused Vikas Gaikwad has inflicted blows on the chest of deceased Yogesh with the help of knife and further both of them extended beating with the help of stones to deceased Yogesh. He fell down on the road.

vre/-

It has been recorded in the said camera no.5 that co-accused Jitendra Dahatonde has nine times given blows of stones on the person of deceased Yogesh and co-accused Vikas Gaikwad has given blows of stones on the person of deceased Yogesh thirteen times. Except these two assailants, there is no reference to any third assailant in the said CCTV footage. Though learned APP has pointed out the criminal history of the applicant, however, it appears that in the year 2013, a crime under Section 324 of IPC came to be registered against the applicant and in the year 2018, crime under Section 325 of IPC came to be registered. It is not clear as to what is the status of those crimes at present. However, *prima facie*, the possibility of adding the name of the applicant in commission of the crime with some ulterior motive due to previous enmity cannot be ruled out. The applicant is in jail in connection with the present crime for a considerable period. The applicant is available for trial. Appropriate conditions can be imposed to rule out the possibility of tampering with the prosecution evidence. In view of the same, I proceed to pass the following order:

vre/-

ORDER

- I. The application is hereby allowed.
- II. The applicant KARAN S/O KALYAN SALE be released on bail in connection with Crime No. 257 of 2020 registered with MIDC Waluj Police Station, District Aurangabad for the offence punishable under Sections 302 and 120-B of IPC, on his furnishing PB. of Rs.20,000/- with one solvent surety of the like amount on the following conditions :-
- a] The applicant shall not tamper with the prosecution evidence in any manner.
- b] The applicant shall not enter within the limits of village Wadgaon Kolhati, Taluka and District Aurangabad till conclusion of the trial.
- III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

vre/-