

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

9 BAIL APPLICATION NO.1051 OF 2020

VILAS RAJESH MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Jadhav Satej S.
APP for Respondent-State : Mr. S. B. Narwade.

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CORAM : V. K. JADHAV, J.
DATE : 14.10.2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No.214 of 2019 registered with Ramanand Nagar Police Station, District Jalgaon for the offences punishable under Sections 302, 363, 364, 201 read with Section 34 of the IPC. His application with similar prayer came to be rejected by the Additional Sessions Judge, Jalgaon, vide order dated 11.08.2020 in Criminal Bail Application No.437 of 2020.

2. The learned counsel for the applicant submits that the informant has no first hand information about the incident. It appears that after the dead body of deceased Vinod was found on the railway track, and his body was actually found in two

pieces, initially the A.D. was registered and after the Post Mortem examination and cremation, on 22.12.2019, on the basis of the information received from two friends of deceased Vinod, namely Shekhar Mistri and Shubham Gosavi, the informant has lodged the complaint. The learned counsel submits that as per the allegations made in the complaint, deceased Vinod was having affair with the wife of co-accused Kailas, namely Poonam and therefore, co-accused Kailas and the present applicant, who are the real brothers interse, were searching deceased Vinod. The learned counsel submits that it appears from the statement of those two witnesses Shekhar Mistri and Shubham Gosavi respectively that on 20.12.2019, at about 4.00 p.m., near one petrol pump, co-accused Kailas, the present applicant had come and co-accused Kailas has questioned deceased Vinod about some recording and slapped him. According to these two witnesses, who were along with the deceased Vinod, co-accused Kailas and the present applicant took deceased Vinod along with them on their motorcycle. The learned counsel submits that it further appears from the statement of one Rahul Prakash Mahajan, who is the real brother of the said Poonam that on 20.12.2019,

at about 6.30 to 7.00 p.m. co-accused Kailas, who happened to be his brother-in-law made a phone call on his mobile and called him in their house, situated at Rameshwar Colony. Even co-accused Kailas informed to him that they brought the said boy (deceased Vinod) at the house. The learned counsel submits that in the house co-accused Kailas, by questioning deceased Vinod, confirmed in presence of the said witness Rahul about his affair with Poonam. Thereafter, witness Rahul has returned to his house. The learned counsel submits that it has come in the statement of said Rahul that thereafter the present applicant has made a phone call to him again and called him with his mother in the house by informing that co-accused Kailas has become violent and he would do something to the boy (deceased Vinod). The learned counsel submits that there was no reason for the applicant to make a phone call to the brother-in-law of co-accused Kailas, had there been any intention and also participation in the alleged commission of murder of deceased Vinod. The learned counsel submits that the Post Mortem Report of the dead body of the deceased Vinod speaks about the crush injury on the abdomen resulted into two body parts from abdomen and the said crush injury

mentioned as ante mortem injury in column No.18(a). The learned counsel submits that there are no marks of violence on the body and the death is “due to Railway Accident with separation of the body into two parts from abdomen region”. The learned counsel submits that there is no evidence even about the homicidal death. The learned counsel submits that the possibility of committing suicide by deceased Vinod because of the humiliation at the hands of co-accused Kailas cannot be ruled out. However, there is no further connecting evidence as to how the deceased went or brought to the railway track. The learned counsel submits that the applicant is in jail in connection with the present crime since 23.12.2019. There is no criminal history. The applicant is ready to furnish surety and also ready to abide the conditions, if imposed by this Court. The applicant may be released on bail.

3. The learned APP has strongly resisted the application on the ground that though the informant has no first hand information about the incident, however, witnesses Shekhar Mistri and Shubham Gosavi, who happened to be the friends of deceased Vinod were along with deceased till 4.00 p.m. on 20.12.2019. In their presence, co-accused Kailas had slapped

deceased Vinod by questioning about the recording done by him. These two witnesses have also stated that the present applicant also accompanied co-accused Kailas at that time. The deceased was taken by co-accused Kailas and the present applicant along with them on the motorcycle. The learned APP submits that the deceased was lastly seen alive in the company of the co-accused Kailas and the present applicant even at that spot and even in the house situated in Rameshwar Colony. The learned APP submits that the police statement of Rahul Prakash Mahajan further indicates that the deceased was lastly seen alive in the company of the co-accused Kailas and the present applicant in the house of the present applicant situated at Rameshwar Colony. The learned APP submits that thereafter, the dead body of deceased Vinod was found on the railway track on the next day, at about 1.55 a.m. The learned APP submits that during the course of investigation, statement of one Ajay Sonawane was recorded. On 20.12.2019, deceased Vinod met him and informed that the said Poonam called to him on his mobile and informed him that co-accused Kailas, the present applicant and Bhushan Mahajan have decided to kill deceased Vinod. *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, I find that the informant has no first hand information about the incident and only after receiving the information from Shekhar Mistri and Shubham Gosavi, the informant has lodged the complaint. I have carefully perused the statements of Shekhar Mistri, Shubham Gosavi and Rahul Mahajan. On conjoint reading of their statements, it appears that in presence of witness Shekhar and witness Shubham, co-accused Kailas slapped the deceased near the petrol pump and thereafter took the deceased along with him. Co-accused Kailas was also accompanied by the present applicant at that time. It further appears that in the house of the applicant situated at Rameshwar Colony, the deceased was brought. Witness Rahul Prakash Mahajan is the real brother of Poonam. Said Poonam is wife of co-accused Kailas. Co-accused Kailas was suspecting that his wife Poonam is having an affair with deceased Vinod. In order to confirm the same, deceased Vinod was brought by co-accused Kailas at Rameshwar Colony in the house of the applicant. It further appears that the co-accused Kailas had called his brother-in-

law, witness Rahul in the house at Rameshwar Colony and in his presence, after slapping deceased Vinod, got it confirmed that deceased Vinod was having some affair with his wife Poonam. Thereafter, as directed by co-accused Kailas, witness Rahul returned to his house. It further appears from the statement of said Rahul that at about 9.45 to 10.00 p.m., the present applicant had made a phone call to Rahul and asked him to come immediately and give some understanding to co-accused Kailas, as he has become violent and he would do something to the said boy (deceased Vinod). Even the applicant had informed to witness Rahul that co-accused Kailas had driven him and his mother out of the house. It further appears that Rahul, along with his mother Sangita, had been to the said house situated at Rameshwar Colony. However, at that time only Bhushan, i.e. the third brother, had opened the door. Witness Rahul did not find applicant present in the house. Even assuming that deceased Vinod was there in the house situated at Rameshwar Colony and co-accused Kailas had questioned him, threatened him and slapped him, however, it has also come in the statement of the said Rahul that the applicant had informed to him about the conduct of

co-accused Kailas and further invited them to the said house again. It is unlikely on the part of the assailant to call upon the witness like Rahul in the house again situated at Rameshwar Colony. Even assuming that certain incident had taken place in the house situated at Rameshwar Colony, there is no further connecting evidence against the applicant. It is not clear as to what happened to deceased Vinod thereafter. There is no further evidence as to how deceased Vinod went to the railway track. There is no evidence as to whether he went to the railway track on his own or whether he was brought near the railway track by some other person. On careful perusal of the Post Mortem report, it appears that the body was having the crush injuries and the dead body was separated into two parts from the abdomen region indicating that the railway passed over the body. The said injury stated to be an ante mortem injury as mentioned in column No.18(a) of the Post Mortem Report. There are no marks of violence, no other cause of death. The learned APP has made an attempt to point out from the statement of co-accused Kailas recorded during drawing the panchnama under Section 27 of the Evidence Act for recovery of the auto rickshaw, that the neck of the deceased

was constricted. Had it been the death by constriction of neck, the crush injury as noted in the Post Mortem Report would have been the post mortem injury and not the ante mortem injury. Furthermore, the said statement of the co-accused Kailas recorded while drawing the panchnama under Section 27 is inadmissible in evidence. The Post Mortem Report does not indicate any other cause of death. I find much substance in the submissions made on behalf of the applicant that because of the extreme humiliation caused to the deceased at the house situated at Rameshwar Colony at the hands of co-accused Kailas, the possibility of committing suicide on the railway track cannot be ruled out. Thus, considering the entire aspect of the case, I am inclined to release the applicant on bail. The applicant has a fixed place of residence having no criminal history. Hence, I proceed to pass the following order :

ORDER

1. The application is hereby allowed.
2. The applicant VILAS RAJESH MAHAJAN in connection with Crime No.214 of 2019 registered with Ramanand Nagar Police Station, District Jalgaon for the offences punishable under Sections

302, 363, 364, 201 of 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/-