

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**940 BAIL APPLICATION NO.1119 OF 2020**

Satish @ Chhakul S/o Govind Vallapwad ... Applicant.

Versus

The State of Maharashtra ... Respondent.

WITH

**BAIL APPLICATION NO.1135 OF 2020**

Madhav s/o Babu Vallapwad ... Applicant.

Versus

The State of Maharashtra ... Respondent.

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Advocate for Applicants : Mr. U. B. Bilolikar.

APP for Respondent-State : Mr. A. S. Shinde.

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**CORAM : V. K. JADHAV, J.**

**DATE : 08.10.2020**

**PER COURT :-**

1. The applicants in both the applications are seeking regular bail in connection with Crime No.99 of 2020 registered with Mukramabad Police Station, District Nanded for the offences punishable under Sections 302, 201 read with Section 34 of IPC. Their application with similar prayer came to be rejected by the Sessions Judge, Kandhar, Link Court at

Mukhed, vide order dated 18.08.2020 in Criminal Bail Application No.135 of 2020.

2. The learned counsel for the applicants in both the applications submits that the informant has no first hand information about alleged incident and on the basis of the information received from one Shamu Laxman Rathod and Ankush Khushal Pawar, the informant has lodged the complaint. The said Shamu and Ankush have informed to the informant that on 04.05.2020, at about 4.00 p.m. they have seen the son of the deceased namely Kirtidas @ Vasant proceeding towards Taibai Tanda along with co-accused Raosaheb Rathod on his motorcycle. The learned counsel submits that in the complaint, there is no reference to the names of the present applicants. The said complaint came to be lodged on 05.05.2020. The learned counsel submits that on 07.05.2020, the supplementary statement of the informant was recorded wherein he has referred the names of the applicants for the first time by making addition stated that on 04.05.2020, at about 2.00 p.m., when he was in the house, the present applicant along with co-accused Raosaheb and one co-accused Balaji had come to his house and took along with them

deceased Kirtidas @ Vasant. The learned counsel submits that during investigation, the Investigating Officer has recorded the statement of the many witnesses wherein those witnesses have given the different time, different locations of lastly seen the deceased in the company of the accused persons. The learned counsel submits that there is no direct evidence in the alleged commission of crime of murder. The applicants have fixed place of residence. There is no criminal history. The applicants are in jail since long. Both the applicants may be released on bail.

3. The learned APP has strongly resisted the application on the ground that there is one eye witness to the incident. Witness Dhondiba has stated that below the Neem tree, at about 4.00 p.m., he has seen that the present applicants and the co-accused persons beating the deceased with the help of small stones. Witness Premdas whose statement was recorded on 13.05.2020 has stated about the presence of the applicant and the co-accused persons, at about 10.00 p.m. near one Bhawani Tanda and according to him even at that time, the present applicants and the co-accused persons have pointed out that deceased Kirtidas slept there on the ground because of

the headache. The learned APP submits that *prima facie* there is evidence about homicidal death. The Post Mortem report indicates that deceased died due to heamorrhage due to multiple injuries. The applicants 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 there is no direct evidence against the applicants about the commission of murder. It appears that though the informant has not referred the names of the applicants, however, in supplementary statement recorded belatedly for the first time, referred the names of the applicants along with the co-accused Raosaheb taking away deceased Kirtidas @ Vasant from the house, at about 2.00 p.m. According to the informant, witness Shamu Rathod and Ankush Pawar has given information that on 04.05.2020, at about 4.00 p.m., they have seen the deceased Kirtidas @ Vasant along with Raosaheb proceeding on his motorcycle towards Taibai Tanda. On perusal of the statement of said Shamrao @ Shamu, it appears that he has seen the deceased in the company of co-accused Raosaheb on his motorcycle proceeding towards Taibai Tanda, at about 2.00 p.m. Witness Ankush Pawar has stated that on 04.05.2020, at

about 2.30 p.m., he has seen deceased Kirtidas @ Vasant with co-accused Raosaheb proceeding towards Taibai Tanda on his motorcycle. However, in the supplementary statement, the informant has stated that on 04.05.2020, at about 2.00 p.m. the applicants along with co-accused had been to his house and took along with them deceased Kirtidas @ Vasant. Furthermore, the evidence of those two witnesses as pointed out by the learned APP, is further more confusing. Witness Dhondiba Rathod has referred the time as 4.00 p.m. and stated that below one Neem tree, the applicants and the co-accused persons were beating the deceased with the help of small stones. He has not stated anything as to what happened afterwards. The learned APP has referred the statement of one witness Premdas and according to the statement of witness Premdas he has seen the applicant and the co-accused persons with deceased Kirtidas at about 10.00 p.m. If this incident about the beating with the help of small stones to the deceased had taken place at about 4.00 p.m., it is pertinent that the applicants and the co-accused persons remained with the deceased even at 10.00 p.m. and on making inquiry with them by witness Premdas disclosed to him that deceased Kirtidas

slept because of the headache. Though there are injuries on the person of the deceased as detailed in column No.17 in the Post Mortem Report, however, there is no evidence as to how the deceased had sustained those injuries. The learned APP has pointed out that there is extra judicial confession allegedly made by applicant Madhav wherein the reference is given that in the quarrel he had lifted the deceased and thrown him on the ground and therefore, deceased Kirtidas @ Vasant become unconscious. The said extra judicial confession allegedly made on 04.05.2020 itself, at about 5.30 p.m. There is no direct admission of guilt so far as this confession allegedly made by the applicant Madhav. There is no criminal history. Thus, considering the entire aspect of the case and particularly the statement of those witnesses referring the different time, different locations and the deceased in the company of co-accused Raosaheb mainly, I am inclined to release the present applicants on bail with certain conditions. Hence, I proceed to pass the following order :

### **ORDER**

1. Both the applications are hereby allowed.

2. The applicant Satish @ Chhakul S/o Govind Vallapwad in Bail Application No.1119 of 2020 and the applicant Madhav s/o Babu Vallapwad in Bail Application No.1135 of 2020 in connection with Crime No.99 of 2020 registered with Mukramabad Police Station, District Nanded for the offences punishable under Sections 302, 201 read with Section 34 of IPC, be released on bail on furnishing P.B. of Rs.20,000/-(Rupees Twenty Thousand only) each with one solvent surety of the like amount each on the following condition :-
  - a] The applicants shall not tamper with the prosecution evidence in any manner.
3. Both the applications are accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-