

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

26 BAIL APPLICATION NO.1188 OF 2020

Laxman s/o Baliram Dhawale,
Age; 25 years, Occ; Agril,
R/o; Tuljapur, Tq. Tuljapur,
Dist. Osmanabad.

...Applicant.

VERSUS

The State of Maharashtra,
Through Police Station Tuljapur,
Tq. Tuljapur, District Osmanabad.

...Respondent

...
Advocate for Applicant : Shri Choudhari Sushant B
APP for Respondent-State : Shri P.G. Borade
...

CORAM : M. G. SEWLIKAR, J.

DATE : 29th OCTOBER, 2020.

ORDER :

1. This is an application for seeking regular bail in Cr. No. 290 of 2018, registered in Tuljapur, Dist. Osmanabad, for the offence punishable under Sections 363, 396 of the Indian Penal Code (I.P.C.)
2. Facts giving rise to this application are that the informant alongwith the deceased Somnath left for Pune from Ujani, and they reached Tuljapur on 15.9.2018 at about 10.00 p.m. On the request of the deceased Somnath, vehicle was stopped at Tuljapur bus stand. The informant got down for urinating and when he came back, he noticed that the key of the vehicle was missing. He suspected that some one

might have stolen the key. He noticed that at the stall of 'Anda Burji', a boy of 25 years was quarreling with the owner of the stall on account of amount of the bill. He was accompanied by four boys of the same age group. Since there was no key, the informant and Somnath were sitting in the Car. At around 1.00 a.m., the boys who were quarreling with 'Anda Burji' stall owner, came there and knocked the window glass. Somnath opened the door and those boys assaulted Somnath. Two of the boys got into the pick up van from passenger seat and started beating the informant. They robbed the informant for Rs. 2500/-, a mobile of Oppo company and they also demanded Rs. 50,000/- from him. He noticed that Somnath was being beaten by these boys. The informant got scared and ran away from the spot. He noticed a patrolling police van. He told police about the incident. The deceased was found at the place where the pick up van was parked. The deceased was dead by that time. Those boys were between the age group of 20 and 25 years. On these allegations F.I.R. was lodged on 16.9.2018.

3. Hears Shri Choudhari Sushant B., the learned counsel for the applicant and Shri P.G. Borade, the learned A.P.P. for the respondent-State.

4. Shri Chaudhari, learned counsel for the applicant argued that except the identification parade, there is no evidence connecting the applicant with the offence. He argued that the accused at whose

instance the mobile of the deceased was recovered, has been released on bail. He argued that as per the prosecution case, incident took place at 1.00 a.m. There was darkness all over, owing to which it is highly impossible that the informant was able to see the faces of the applicant and others clearly. He argued that, therefore, evidence of identification parade cannot be relied upon. He submitted that accused at whose instance the mobile handset has been recovered has been released on bail. The case of the applicant stands on the same footing. Therefore, the applicant is entitled to be released on bail on the ground of parity.

5. Shri Borade, learned A.P.P. for the respondent-State argued that the informant had seen the applicant and other four boys at the stall of 'Anda Burji' quarreling with the owner of the stall, on account of amount of bill. Therefore, he had the opportunity to see the applicant and others closely. Therefore, the identification parade can be relied upon. He submitted that the offence is serious in nature. Application therefore, deserves to be rejected.

6. Perused the papers annexed with the petition. On perusal of the papers, it is noticed that except the identification parade there is no evidence to connect the applicant with the offence. Mobile hand set has been recovered at the instance of the accused, who has been released on bail. However, there is no evidence to show that the said mobile hand set was owned and possessed by the deceased at the

time of the incident. Learned counsel for the applicant has produced on record a copy of the order passed by this Court (V.K. Jadhav, J). It shows that accused Nitin Vasantrao Hede has been released on bail. On perusal of the said order, it can be said that the case of the applicant stands on the same footing. No other incriminating circumstance is brought on record to indicate that the applicant is not entitled to be released on bail on the ground of parity. The applicant has no criminal antecedents. He is having permanent place of residence and is available for trial. I am, therefore, inclined to release the applicant on bail. Hence the following order is passed :

ORDER

1. Application is allowed.
2. Applicant Laxman s/o Baliram Dhawale be released on P.R. bond of Rs. 20,000/- (Rs Twenty Thousand Only), with one solvent surety in the like amount, in Cr. No. 290 of 2018, registered with Tuljapur, Police Station, District Osmanabad, for the offence punishable under Section 363, 396 of the Indian Penal Code, on condition that the applicant shall not temper with the prosecution evidence, in any manner whatsoever.

(M. G. SEWLIKAR)
JUDGE