

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

BAIL APPLICATION NO.1219 OF 2020

Ganpat s/o Linganna Arsewar,
Age 45 years, occupation Agri.,
R/o : Kundalwadi Tq. Biloli
Dist. Nanded.

...Applicant

VERSUS

The State of Maharashtra,
Through Investigation Officer
Police Station Kundalwadi
Tq. Biloli Dist. Nanded.

...Respondent

.....

Advocate for Applicant : Mr. Estling S. Murge.
APP for Respondent : Mr. N. T. Bhagat.
Advocate for Assist to APP : Mr. G. A. Ozalwar.

.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 02-12-2020.

ORDER :

1. Present application has been filed under Section 439 of Code of Criminal Procedure. Applicant has been arrested in connection with Crime No.72 of 2020, registered with Police Station, Kundalwadi Dist. Nanded, for the offence punishable under Section 302 of the Indian Penal Code.
2. Heard learned Advocate for the applicant Mr. Estling S. Murge

and learned APP for respondent Mr. N. T. Bhagat.

3. It has been vehemently submitted by the learned Advocate for the applicant that though the incident is stated to have taken place in the intervening night of 05-05-2020 to 06-05-2020, yet the FIR appears to have been lodged under Section 307 of the Indian Penal Code at the late hours on 06-05-2020. At that time the said FIR was against unknown person. Deceased was the father of the informant and the deceased had gone to sleep at a place which was under construction, and when it was found that the father has not got up and come to home around 7.45 a.m., it was found that the father was in injured condition. The father of the informant was shifted to Yashosai Hospital at Nanded and while under treatment, he expired at about 4.30 p.m. on 08-05-2020. In his supplementary statement taken on 09-05-2020 the informant has arrayed present applicant as accused, but the said supplementary statement would show that it was on the basis of the suspicion. Present applicant is the uncle of informant. In his supplementary statement the informant has stated that the applicant, his father and one Vyankat Navathe had taken 36 Acres of land belonging to one Pandharinath Dachawar for cultivation in 2016. However when the crops did not

come as per expectation, the father of the informant refused to take part in the cultivation activity in 2017. The land owner therefore did not give the land for cultivation to the applicant and Vyankat Navathe. On that count the applicant used to say that because of the father of the informant, he could not get the said land. Thereafter, one lady by name Laxmibai Bhumanna Arshewar who was residing with the applicant committed suicide due to the harassment by applicant, his wife and daughter. At that time the deceased had given statement against the present applicant and on that count also the applicant was annoyed with the deceased. These were the reasons given by the informant to array the applicant but he has not stated when the suicide had taken place. The reason for the action on 05-05-2020 or 06-05-2020 could not be stretched back for about two years. The statements of witnesses would also echo the same facts and it appears that they are mostly on the basis of suspicion. Statement of two witnesses Ravi Thakurwar and Prakash Karpe taken on 19-05-2020 would show that they claimed that they had seen the applicant at 04.00 a.m. of 06-05-2020 and 11.00 p.m. on 05-05-2020, going towards the spot in suspicious manner. In fact, they had attended the funeral and had knowledge about lodging of FIR by the informant, yet why they had kept quite

for so many days is a question and their statements cannot be taken as any such evidence which should keep the applicant behind bar till the trial is over. Therefore, taking into consideration the entire charge-sheet, it can be seen that there is no necessity that the applicant should be kept behind bar as the trial would take long time to stand.

4. Learned Additional Public Prosecutor strongly opposed the application stating that the charge-sheet discloses the motive as well as the fact that the two witnesses had seen the applicant going in suspicious manner. The post-mortem report shows the probable cause of death as head injury. When the death is homicidal and motive appears to be shown against the applicant, and also there is recovery of axe at the hands of applicant, there is sufficient evidence against the applicant. He does not deserve to be released on bail.

5. At the outset, it is to be noted that initially when the offence was registered under Section 307 of Indian Penal Code, it was against unknown person. Further after death of father when the supplementary statement of the informant was taken on 09-05-2020, he had then come with a story of motives on two counts, one is not taking active part in cultivation along with the applicant in

2017 and another it appears that the statement was given by the deceased against the applicant in the case where Laxmibai had committed suicide. The informant has not given the year in which that incident had taken place, but it can be seen from remand report dated 18-05-2020 that the said incident was Crime No.91 of 2017, under Section 306, 498-A read with 34 of the Indian Penal Code. It is also stated therein that the applicant has been acquitted in that matter. Therefore, taking into consideration that incident whether the cause of action would have survived for the applicant to take revenge in 2020, in other words whether there would be a proximity between the two incidents is a question, and under such circumstance as per the tilt in favour of the accused.

6. The two witnesses who had allegedly seen the applicant going in suspicious manner, their statements have been recorded on 19-05-2020 and not earlier to that. They had the knowledge about the incident on 06-05-2020 itself and they got the knowledge about the death of deceased on 08-05-2020. They also got the knowledge about the arrest of the applicant on 14-05-2020, and thereafter, after about five days thereafter, after remembering the witnesses Ravi Thakurwar, states that he had seen the applicant at about

04.00 a.m. in suspicious manner on 06-05-2020. He has specifically stated that after remembering he is saying that. He has not actually seen the incident i.e. assault by the applicant to the deceased, but only on the basis of suspicion he is saying. At the cost of repetition it is to be stated that he states that he had seen the applicant at about 04.00 a.m. on 06-05-2020, whereas almost on similar contents witness Prakash Karpe says that he had seen the applicant at about 11.00 p.m. on 05-05-2020. Therefore, this difference in timing is required to be seen. Whether the accused who had gone to the spot around 11.00 p.m. of 05-05-2020 had come back at 04.00 a.m. on 06-05-2020 would be a question and for so much of long period what the accused was doing, is a question.

7. It will not be out of place to mention here that the original informant had filed Criminal Application No.1938 of 2020 to assist learned APP. He had filed certain documents along with his affidavit-cum-application. If his affidavit-cum-application as well as Exhibit "B" to "D" are considered, then he has come with a different story and in fact he had filed Misc.Criminal Application No.139 of 2020 before Judicial Magistrate, First Class, Biloli for taking action under Section 156 (3) of Code of Criminal Procedure against five persons

who made against in the said application. He has now come with a case that those five persons had conspired with the present applicant in committing murder of his father. When this aspect was pointed out to the learned Advocate for the applicant as well as learned APP, it has been pointed out by the learned Advocate for the applicant that now the said application before Judicial Magistrate, First Class, Biloli has been disposed of and the learned Magistrate has refused to take any cognizance of the said application. Learned APP submitted on instructions from the Investigating officer that no such a statement which would be supporting the contents of annexures "B" to "D" to the application No.1938 of 2020 was ever produced or told. In fact the entire investigation is over and the charge-sheet is filed against the applicant. Thus, it is clear from all these facts that there appears to be a different stand taken by the informant stating that somebody else is also involved.

8. Taking into consideration the evidence that is collected in the charge-sheet as well as for the subsequent event as pointed out from Criminal Application No.1938 of 2020, it will not be appropriate to keep the present applicant behind bars. He deserves to be released on bail. Hence, following order.

ORDER

- 1) Application is allowed.
- 2) Applicant Ganpat s/o Linganna Arsewar be released on P.R. of Rs.30,000/- (thirty thousand) with one or two solvent sureties of like amount.
- 3) He shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall attend the Court proceedings regularly.
- 5) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-