

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 BAIL APPLICATION NO. 1264 OF 2020

HANUMAN S/O VISHWANATH KURDHANE
VERSUS
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. S. R. Bagal h/f
Mr. B. N. Gadegaonkar
APP for Respondent-State : Mr. N. T. Bhagat

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CORAM : V. K. JADHAV, J.
DATED : 03RD DECEMBER, 2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No. 94 of 2019 registered with Badnapur Police Station, Taluka Badnapur, District Jalna for the offence punishable under Section 302 of IPC. His application with similar prayer below Exhibit 3 in S.C. No. 180 of 2019 came to be rejected by the Additional Sessions Judge, Jalna vide order dated 19.11.2019.

2. Learned counsel for the applicant submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel
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submits that apparently there is no motive for the applicant to commit murder of his own son. Learned counsel submits that deceased Santosh was residing along with the applicant and other family members. Learned counsel submits that though the applicant's wife Nanabai and daughter Gita slept on the terrace of the neighbour but they did not hear any noise from the house. However one witness Dattu Korde, whose statement came to be recorded belatedly, has stated about some unusual noise from the house of the applicant where the deceased slept alone and so also about the presence of the applicant in the house at the time of the alleged incident. Learned counsel submits that though one iron rod and the blood-stained cloths shown to have been recovered at the instance of the applicant, however, only on the basis of this evidence the application seeking bail cannot be rejected. Learned counsel submits that the applicant is ready to abide the conditions, including the condition as not to enter within the limits of village Ramkheda, Taluka Badnapur, District Jalna till conclusion of the trial to avoid the possibility of tampering with the prosecution evidence.

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Learned counsel submits that the applicant may be released on bail.

3. Learned APP has strongly resisted the application on the ground that there used to be quarrels between the applicant and deceased Santosh. *Prima facie* there is evidence about the motive on the part of the applicant to commit murder of his own son. Learned APP submits that witness Dattu has seen suspicious activities of the applicant in the night near the house where Santosh slept alone. Learned APP submits that at the instance of the applicant, the blood stained iron rod and his blood stained cloths came to be recovered by drawing panchanama under Section 27 of the Evidence Act. Furthermore, as per the C.A. report, the blood appearing on the iron rod so also on the cloths of the applicant are of the blood group of the deceased. *Prima facie* there is strong case against the applicant. There is strong possibility of tampering of the prosecution evidence. The applicant may not be released on bail.

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4. On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. It further appears that the applicant himself has lodged the complaint. It is also the fact that the dead body of the deceased was found in the house itself in the pool of blood. *Prima facie* there is no apparent cause for the applicant to commit murder of his son deceased Santosh. The witness Dattu Korde, whose statement came to be recorded belatedly, has stated about the suspicious activities of the applicant. According to witness Dattu, though the applicant along with his wife and daughter slept on the terrace of the neighbour, in the night he returned to his house where deceased Santosh slept and knocked the door of the house. Deceased Santosh had thereupon opened the door. According to the witness Dattu Korde, after some time, he heard the voice of the applicant where deceased Santosh slept and he also noticed the applicant leaving the house at that time. However, merely on the basis of these facts it

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cannot be concluded that the applicant is responsible for the death of his son. At the most, it raised a suspicion against the applicant. Even though the blood stains appeared on the clothes of the applicant, however, deceased Santosh was his son and his dead body was found in the pool of blood in the house itself. Thus, the possibility cannot be ruled out that the applicant has handled the dead body and thus the blood stains have appeared on his cloths. So far as the recovery of the iron rod is concerned, the deceased had seven injuries on his person and almost all the injuries are contused lacerated wounds. It is very unlikely that the immediate neighbour and the wife and daughter of the applicant, who slept along with the applicant on the terrace of their neighbour, have not heard the noise from the house, however, witness Dattu Korde, who resides in the side lane has heard the noise from the house of the applicant. Thus, considering the entire aspect of the case, I am inclined to release the applicant on bail on certain conditions. It would be just and appropriate to restrict entry of the applicant in the village till conclusion

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of the trial to avoid tampering of the prosecution evidence.

Hence, following order.

O R D E R

I. The application is hereby allowed.

II. The applicant HANUMAN S/O VISHWANATH KURDHANE be released on bail in connection with Crime No. 94 of 2019 registered with Badnapur Police Station, Taluka Badnapur, District Jalna for the offence punishable under Section 302 of IPC, on his furnishing PB. of Rs.25,000/- 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 in village Ramkheda, Taluka Badnapur, District Jalna till conclusion of the trial.

III. Application is accordingly disposed of.

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5. Needless to say that the observations made herein above are for the disposal of the bail application and the trial court shall not get influenced by the observations made herein above. It is for the trial court to consider the evidence and decide the case on its own merits.

(V. K. JADHAV, J.)

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