

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1017 OF 2020

Vaibhav s/o Chandrashekhar Shewale Applicant

Versus

The State of Maharashtra Respondent

Mr. N.S. Ghanekar, Advocate for the applicant.
Mr. N.T Bhagat, APP for respondent-State.

CORAM : M.G. Sewlikar, J.
VACATION COURT

DATE : 19th November, 2020.

PER COURT :-

1. This is an application under Section 438 of the Code of Criminal Procedure for anticipatory bail.

2. Facts leading to this application in nutshell are that the deceased Chandrakant @ Mintu Fulchand Umbre was the son of the informant Fulchand Umbre. The applicant and the deceased were friends. On 31.07.2020, at about 5.30 pm, the deceased and the applicant were taking drinks near water canal, in local language called as 'Khadan'. After consuming liquor, both i.e. the deceased

and the applicant, started swimming in the said water canal. Chandrakant did not know swimming at all whereas the applicant could barely swim. It is the case of the prosecution that witness Kamalbai Bhalerao was passing from the said Khadan at about 4.30 pm. According to the said Kamalbai, two boys were swimming in shallow water whereas the other boys were swimming in deep water. While returning from the flour mill, she saw some boys running with their clothes and one of the boys who was swimming in the shallow water i.e. the applicant was standing on the bank of the water canal in frightened state. Thereafter she learnt that the deceased had drowned. She went to the Defence Career Academy run by Rajesh Patil. On learning about drowning of the deceased, Rajesh Patil came there running and brought out the deceased Chandrakant. Said Rajesh Patil and the applicant tried to fish out water from the abdomen of the deceased. They tried to give him mouth to mouth breathing but nothing worked. Therefore, the deceased was shifted to the hospital. During treatment the deceased breathed his last.

4. According to the informant, the deceased did not know swimming and, therefore, it was highly impossible that he would step into water. According to the informant, 2/3 days before the incident,

the applicant had come in front of the house of the informant and had threatened the deceased on account of their previous quarrel.

5. According to the informant, the cause of death is drowning associated with head injury. According to the informant, to take revenge against the deceased, the applicant had hatched a conspiracy to kill the deceased. He, therefore, lodged the First Information Report on 14.10.2020 on the basis of which, the offence under Section 302 of the Indian Penal Code came to be registered against the applicant.

6. Heard Shri Ghanekar, learned counsel for the applicant and Shri Narwade, learned APP for the State.

7. Learned counsel Shri Ghanekar submitted that the deceased and the applicant were drunk. They were friends. Both of them were swimming in the shallow water. He argued that the applicant was standing on the bank of the water canal and when the deceased was taken out of the water canal, he along with Rajesh Patil gave mouth to mouth breathing to the deceased. He accompanied him to the hospital. There was no enmity between the applicant and

the deceased. He submitted that the deceased did not have any external injury but had internal injury and that could have been caused as the deceased had fallen into the water. He submitted that the case is based on circumstantial evidence. There is no eye witness to the incident. The evidence on record and the contents of the First Information Report do not indicate that custodial interrogation of the applicant is required. He, therefore, prayed for allowing the application.

8. Learned APP Shri Narwade argued that there was enmity between the applicant and the deceased. Applicant had a quarrel with the deceased. He argued that it has come in the statement of the witnesses that the applicant, immediately after the incident, was talking on phone with someone and said that “मिटूचे काम झाले” indicating that Mintu had been eliminated and they should come there. He further argued that there is evidence to show that the deceased did not want to swim in the Khadan but he wanted to swim in the swimming pool but the applicant was not ready for it. Shri Narwade submitted that the inaction on the part of the applicant at the time of the incident indicates his involvement in the commission of the offence. He further argued that the statement of

the applicant was recorded under Section 174 of the Code of Criminal Procedure. His version does not tally with his subsequent statement. He argued that the applicant had a motive to eliminate the deceased and, therefore, he did not inform anyone about the incident of drowning. He submitted that witness Kamalbai enquired with the applicant and then only the applicant told her about drowning of the deceased. He argued that if the applicant had not been involved in the incident, he would have immediately informed others about the incident and the life of the deceased could have been saved. He argued that inaction of the applicant in securing help for the deceased speaks volume about his involvement in the crime.

9. Perused the copies of investigation papers produced by the learned APP. Statement of Kamalbai shows that on 31.07.2020 she had gone to the flour mill at about 4.30 pm. At that time, 10 to 12 boys were swimming in the khadan. Out of them, 2 boys were swimming in the shallow water whereas other boys were swimming in deep water. While returning she saw some boys running with their clothes and the applicant was standing on the bank of the water canal in a frightened state. She asked him why was he standing there like that and then he told that his friend i.e. the deceased had

drowned. Thereafter she immediately went to the Defence Career Academy run by Rajesh Patil. Rajesh Patil came there, he jumped into the water three times. He was unsuccessful in the first two attempts in tracing the deceased. In the third attempt, he could lay his hands on the legs of the deceased and then he along with the applicant brought the deceased out. The deceased was immediately shifted to the hospital at about 6 pm. It seems from the police report that the deceased died at 8.45 pm during treatment.

10. This shows that Kamalbai is the first witness who had seen the applicant after the incident. From her statement, it appears that 8 to 10 boys were swimming along with the applicant and the deceased. Her statement also indicates that the applicant and the deceased were swimming in the shallow water and other boys were swimming in deep water. It appears from the statement of this witness that these 8 to 10 boys are the eye witnesses to the incident. It does not appear from the investigation papers that the Investigating Officer tried to record statement of any of these boys. They could have thrown light on the manner in which the incident happened.

11. Statement of witness Ankush Chavan shows that on

31.07.2020 at about 3.30 pm he received a call from the deceased. The deceased requested him to bring 2/3 bottles of water as both of them i.e. deceased and the applicant had run out of water. Accordingly, said Ankush Chavan went at the brick kiln of Nazir Pahelwan. Ankush Chavan and the deceased thereafter went to Khadan where the applicant was sitting and was drinking liquor. At 6.30 pm he received a call from the applicant that the deceased had drowned in Khadan. There is nothing on record nor any witness has stated as to what was the enmity between the applicant and the deceased. Nothing is there on record either to indicate as to when this quarrel had taken place. In the absence of these details, it cannot be said that the applicant and the deceased were on inimical terms with each other.

12. Thus, from the evidence on record collected by the prosecution, it appears that custodial interrogation of the applicant is not necessary.

13. These observations are made for the disposal of this application only. Trial Court shall not get influenced by these observations and can come to independent conclusion during trial.

Hence the following order :-

ORDER

1. Application is allowed.
2. Applicant be released on PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) with one solvent surety in the like amount, in the event of his arrest in connection with Crime No. 317/2020 registered with Begumpura Police Station, Aurangabad for the offence punishable under Section 302 of the Indian Penal Code, on conditions that he shall remain present in the concerned police station on every Monday, Tuesday and Friday between 12 noon and 6 pm till further orders, he shall not interfere in the investigation and shall not pressurise the witnesses.

(M. G. SEWLIKAR)
JUDGE

dyb