

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

BAIL APPLICATION NO.1387 OF 2020

Amol s/o Bapurao Aaswar

Applicant

Versus

The State of Maharashtra

Respondent

Mr.Swapnil S. Rathi, advocate for the applicant.
Mr.R.V.Dasalkar, APP for the Respondent.

CORAM : V.K.JADHAV, J.

DATE : 02nd December, 2020.

PC :

1 The applicant- Amol s/o Bapurao Aaswar, is seeking bail in connection with Crime No.0272/2019, registered with Parbhani Gramin Police Station, Parbhani, for the offences punishable under Sections 302, 449, 120-B read with Section 34 of the Indian Penal Code.

2 Heard both sides.

3 The learned Counsel for the applicant submits that the investigation is over and the charge sheet has been submitted. The applicant is in jail, in connection with present crime, since 14th November, 2019. Learned Counsel for the applicant submits that the prosecution case entirely rests upon circumstantial evidence and there is no connecting evidence as against the applicant. The learned

Counsel submits that the First Information Report came to be lodged against unknown persons. Applicant is the step-brother of the deceased. According to the prosecution story, as per the complaint lodged by the informant, who happened to be wife of the deceased, is that during the intervening night of 07th & 08th November, 2020 at about 01.15 a.m., three unknown persons entered in the house of the deceased and spread some liquid on the face of the deceased and informant. It is further alleged that thereafter those three unknown persons tied legs of the deceased with the help of rope and dragged him outside his house. It is further alleged in the complaint that those three unknown persons have committed murder of the deceased. The learned Counsel submits that the informant has described clothes on the persons of said unknown persons as she had seen them in the light of electrical bulb in the room. The learned Counsel submits that though the applicant is step-brother of deceased, the informant has not identified him as an assailant. The learned Counsel submits that during the course of investigation, though certain articles came to be recovered from the co-accused by drawing panchanama under Section 27 of the Evidence Act, however, nothing has been recovered at the instance of the present applicant. There is no motive for the applicant to commit murder of deceased, who happened to be his step-brother. The learned Counsel submits that there is no chain of circumstantial evidence. The applicant has fixed place of residence. The applicant is easily available for trial. He, therefore, submits that the applicant may be released on bail.

4 The learned A.P.P. has strongly resisted the application on the ground that though name of the present applicant is not mentioned in the First Information Report and the First Information Report came to be registered against three unknown persons, however, during the course of investigation, it has been revealed that the present applicant, along with two co-accused persons, had been to the village in a Car from Mumbai and after commission of crime, while leaving the said village, at a distance of 40 Kms , all the accused persons, including the present applicant, were seen by one mechanic and one lodge owner. Both those witnesses have identified the present applicant before the police. The learned A.P.P. submits that *prima facie*, there is a strong case against the applicant. In the backdrop of these facts, recovery of certain articles at the instance of co-accused Nitin is relevant and it is also a circumstance against the applicant. He, therefore, submits that the applicant may not be released on bail.

5 On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that though applicant is the step-brother of the deceased, the informant, who happened to be wife of deceased, had not identified the present applicant even though she had seen those three assailants in the light of electrical bulb in the room. On perusal of the charge sheet, it appears that there is no evidence about arrival of the applicant, along with two co-accused persons, in the said village in one Car. There is no connecting evidence

to indicate that the present applicant was seen in the company of those two accused persons in the village during or after the said incident. It further appears that one mechanic and one lodge owner have marked presence of all the accused persons, including the present applicant, respectively, at a distance of 40 Kms from the village. However, there is no identification parade conducted by the Investigating Officer and those witnesses shown to have identified the applicant before the police. There is no recovery at the instance of the present applicant.

6 So far as the motive part is concerned, on perusal of the statement of the informant, it appears that the deceased used to quarrel with his father and even though the deceased was in possession of one acre land belonging to his step-mother (mother of the present applicant), however, there is no further connecting evidence against the applicant to point out that the applicant used to quarrel with the deceased on account of said agricultural land. *Prima facie*, there is no motive for the applicant for the commission of murder of the deceased. Thus, considering entire aspects of the case and particularly nature of the allegations, as discussed above, I am inclined to release the applicant on bail with certain conditions.

7 Hence, the following order:

(i) Application is hereby allowed.

(ii) The applicant - Amol s/o Bapurao Aaswar, in connection with Crime No.0272/2019, registered with Parbhani Gramin Police Station, Parbhani, for the offences punishable under Sections 302, 449, 120-B read with Section 34 of the Indian Penal Code, be released on bail on his furnishing Personal Bond of Rs.20,000/- (Rs.Twenty thousand) with one solvent surety of the like amount, on the following condition:

(a) The applicant shall not tamper with the prosecution evidence, in any manner.

8 The application is accordingly disposed of.

(V.K.JADHAV)
JUDGE

adb