

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

8 BAIL APPLICATION NO.1409 OF 2019

Prashant s/o Bhanudas Salve,
Age; 28 years, Occ; Labour,
R/o; Ashok Nagar, Sindhiban,
Taluka and District Aurangabad.Applicant

VERSUS

The State of Maharashtra ...Respondent

...
Advocate for Applicant : Shri Ghanekar Nilesh S.
APP for Respondents-State : Shri V.S. Badakh
...

CORAM : M. G. SEWLIKAR, J.

DATE : 29th OCTOBER, 2020.

ORDER :

1. This is an application for seeking regular bail in Cr. No. 300 of 2019, registered with M.I.D.C. Police Station, Waluj, District Aurangabad, for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code (I.P.C.).

2. Facts giving rise to this application are that on 15.4.2019, at 9.10 a.m., information was received by police that one person was lying in unconscious condition near Sharp Industries. He had sustained head injury. The said person was shifted to Ghati Hospital, Aurangabad,

where he was declared brought dead. On taking search of the dead body, Adhar Card was found, which disclosed the name of the deceased as Dhammapal Shantvan Salve. Accordingly, the family members of Dhammapal Salve were informed about the incident. The informant, the brother of the deceased Dhammapal, identified the dead body. During investigation it was revealed that the applicant his cousin Rajendra Kanhoji Magare and the deceased were traveling triple seat on motorcycle. A quarrel ensued between the applicant, Rajendra Magare and the deceased on account of consumption of liquor. The accused Rajendra Magare picked up a stone and pelted it on the head of the deceased, as a result of which the deceased died.

3. During investigation, it transpired that on 14.4.2019, at about 22.00 to 23.00 hours, the applicant, the deceased and said Rajendra Magare had been to FDC Chauk Petrol Pump, Aurangabad. It is seen from the transcript of the CCTV footage that all the three were drinking liquor at the water tank. This was at about 23.00 hrs. Therefore, being last seen with the deceased, the applicant came to be arrested.

4. Heard Shri Ghanekar, the learned counsel for the applicant and Shri Badakh, the learned A.P.P. for the respondent-State.

5. Shri Ghanekar, learned counsel for the applicant argued that except CCTV footage, there is no evidence to show that the applicant was the author of the crime. He submitted that the only evidence against the applicant is, his presence with Rajendra Magare and the deceased Dhammapal at the petrol pump and a Chappal of the deceased Dhammapal at the instance of the applicant. Except this evidence, the prosecution could not collect any evidence against the applicant. He further submitted that accused Rajendra Magare had thrown a stone on the head of the deceased as per the prosecution case. He has been released on bail. The role of the applicant in this crime is only to the extent that he accompanied the deceased and Rajendra Magare. Therefore, on the ground of parity the applicant is entitled to be release on bail.

6. Shri Badakh, the learned A.P.P. for the Respondent-State argued that the offence is serious in nature. They were last seen in the company of the deceased. Soon thereafter, the deceased was found dead. He submitted that this clearly shows that the applicant and Rajendra Magare are responsible for the murder of deceased Dhammapal.

7. The postmortem report shows that the injuries were fresh. The dead body of the deceased was found at 9.20 a.m. The applicant,

Rajendra Magare and the deceased were found at the Petrol Pump on 14.4.2019 at 23.00 to 23.33 hrs. The CCTV footage also shows that the deceased, the applicant and said Rajendra Magare were drinking liquor at 23.35 hrs. There is no further connecting link indicating involvement of the applicant in the offence. The accused Rajendra Magare, according to prosecution case, committed the murder of the deceased by means of a stone, has been released on bail. The applicant according to the prosecution case, is not ascribed any role for the murder of the deceased. In view of this, on the ground of parity, the applicant is entitled to be released on bail. Hence, the following order is passed :

ORDER

1. Application is allowed.
2. Applicant Prashant s/o Bhanudas Salve be released on P.R. bond of Rs. 25,000/- (Rs Twenty Five Thousand Only), with one solvent surety in the like amount, in Cr. No. 300 of 2019, registered with MIDC Waluj, Police Station, District Auranabad, for the offence punishable under Section 302 read with Section 34 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