

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.01 OF 2021

Manoj s/o Balasaheb Kate,
Age 20 years, Occupation Agril.,
R/o Hingangaon, Shiradhon,
Tq. Kallam Dist. Osmanabad.

...Applicant

VERSUS

The State of Maharashtra,
Through Police Station Shiradhon,
Dist. Osmanabad.

...Respondent

.....
Advocate for Applicant : Mr. S. J. Salunke
APP for Respondent-State : Mr. S. Y. Majahan
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 13-01-2021.

ORDER :

1. Present application has been filed by original accused No.2 who has been arrested in connection with Crime No.93 of 2019, dated 04-07-2019, registered with Police Station Shiradhon District Osmanabad for the offence punishable under Section 302 read with 34 of Indian Penal Code. Now the charge-sheet has been filed and the case has been committed to Court of Sessions and thereby it has been numbered as Sessions Case No.144 of 2019. Present applicant came to be arrested on 04-07-2020.

2. Heard leaned Advocate Mr. S. J. Salunke for the applicant and learned Additional Public Prosecutor Mr S. Y. Mahajan for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that he went to his field to supervise construction of well at about 09.00 a.m. on 02-07-2019. On that day his father had gone to Kallam for work. Informant along with labourers returned to the home at about 07.00 p.m. At that time he came to know that his father also returned from Kallam. At about 08.30 p.m. informant's mother Sarubai told him that father Chandrakant went outside. When he was returning at about 08.30 a.m. on 03-07-2019 after supplying milk to the dairy, his uncle Shivaji Kate told him that Chandrakant is laying on road of Karanjikalla to Bhatshirpura at Karanjikalla vicinity. He went to the spot with his uncle Shivaji and saw his father in dead condition. His another uncle Suhas Kate who arrived at the spot thereafter told informant that when he was returning from Kallam to Hingangaon at about 09.00 p.m. last night, he saw Balu @ Balasaheb Kate, Manoj Balasaheb Kate and Chandrakant Kate together in a Tumtum bearing No.MH-25/M-541 on the bridge of Kothala river. The First Information Report states

that since there is dispute between the family of the informant and Balu Kate, Manoj Kate on account of bandh between their fields as well as on the point of water from common well and on account of some money transaction, he made allegation that those persons had committed murder of his father by strangulation.

4. It has been further submitted by the learned Advocate for the applicant that story in the First Information Report is concocted. The entire story rests on circumstantial evidence and there is no direct evidence in this matter. There is a circumstance in the form of last seen of the accused persons together with deceased. There is no further connecting evidence against the applicant. There are allegations about motive, however there is no documentary evidence to substantiate the same. Though it has been alleged in the First Information Report that there were disputes on count of common bandh, common well water and money transaction, yet there is no evidence about the same. There are no criminal antecedents of the applicant. The applicant is ready to abide any condition that would be imposed. Accused No.1 is already released on bail by this Court by order dated 03-12-2020. Learned Advocate for the applicant on the basis of these submissions prayed for bail.

5. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that the accused has committed murder of the deceased. Uncle of the informant had seen the accused persons together in the vehicle before the incident. There is dispute between family of informant and accused on count of common bandh, well water and money transaction. There was no fault on the part of the deceased whose life has been taken by such act. The offence that has been committed by the present applicant is with the common intention with accused No.1, and therefore, he does not deserve any kind of sympathy.

6. At the outset it can be said that the investigation is over when the charge-sheet is filed. Further physical custody of the present applicant is not required for the purpose of investigation. Under such circumstance, the material that is on record is required to be considered. The story in the First Information Report is hearsay. There is no eye-witness to the incident. The post-mortem report gives probable cause of death as, "Asphyxia due to throttling." Definitely the death is homicidal in nature.

7. Now it is required to be considered as to what is the

connection between the present applicant and the offence. Uncle Shivaji Kate of the original informant had seen applicant along with Balu Kate and Mohan Kate in Tumtum No.MH-25/M-541 prior to the incident. Witness also says that they had seen the deceased with present applicant and other accused person before the incident. When the case based on circumstantial evidence then the chain will have to be established by the prosecution beyond reasonable doubt. Further the proximity between the last seen together and the time of death is also required to be established. Though in the First Information Report it is stated that uncle Suhas Kate disclosed that he had seen all of them together around 08.45 to 09.00 p.m., yet the post-mortem report does not give the approximate time of death. Further there are witnesses on the point that the deceased was lastly seen in the night of 02-07-2020 till 11.00 p.m. in the company of the applicant and co-accused, however the dead body has been found on the next day morning. Therefore, taking note of the statements of witnesses who had seen the applicant, deceased and co-accused together, yet that connection can only be established at the time of trial which should be beyond reasonable doubt. Therefore, taking into consideration fact that the investigation is over, further physical custody of the applicant is not required,

accused No.1 has already granted bail by this Court on 03-12-2020 in Bail Application No.1178 of 2020, and therefore, the application deserves to be allowed, however stringent conditions are required to be imposed. Hence, following order.

ORDER

- 1) Application stands allowed.
- 2) Applicant/ accused No.2 Manoj Balasaheb Kate in Sessions Case No.144 of 2019, pending before learned Additional Sessions Judge-3, Osmanabad, be released on P.R. of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty-five thousand).
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) He should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-