

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.31 OF 2021

Langdya @ Gilya Ramesh Kale,
Age 24 years, Occupation Agril.,
R/o Mohorwadi Tq.Shrigonda
Dist. Ahmednagar.

...Petitioner

VERSUS

The State of Maharashtra,
Through Belwandi Police Station,
Tq. Shrigonda Dist. Ahmednagar.

...Respondent

.....
Advocate for Petitioner : Mr. A. M. Gaikwad
APP for Respondent-State : Mr. S. Y. Mahajan
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-02-2021.

ORDER :

1. Present applicant is the original accused No.3 who has been arrested on 23-02-2020 in connection with Crime No.04 of 2020 dated 04-01-2020 by Belwandi Police Station Dist. Ahmednagar for the offences punishable under Section 302, 143, 147, 148, 149, 506 of Indian Penal Code. The present applicant has filed this application for getting bail under Section 439 of Code of Criminal Procedure.
2. Heard learned Advocate Mr. A. M. Gaikwad for applicant and

learned Additional Public Prosecution Mr. S. Y. Mahajan for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. In fact he was not even present at the spot when the alleged incident took place. Even if we consider the First Information Report, it can be seen that no overt act is attributed to the present applicant. Now the investigation is over and charge-sheet has been filed. It will take long time to stand the trial as certain accused persons are stated to be absconding. The applicant need not be asked to linger in jail.

4. It has been submitted on behalf of the prosecution that there is ample evidence against the present applicant. The informant is also an eye-witness who has seen the incident initially and, thereafter, he states that he stood at a place due to fear and did not go further when the applicant and other accused persons were assaulting his father. Only after confirming the fact that the deceased has expired, the present applicant and other accused had left the place. The statements of eye-witnesses especially the mother of the present informant has also stated about the acts done by each of the accused. Perusal of the post mortem report would

show that there were five stab injuries and it is specifically stated that, "All the injuries have clean cut Margins and Blood infiltration at the end of each wound," and, therefore, it is stated that they were 'Antemortem'. The probable cause of death is, "Death due to haemorrhagic shock caused by multiple stab injuries." The absconding accused Alusha Ramesh Kale had given stab injuries to the deceased and, therefore, the murder weapon is yet to be recovered, however from accused No.1 clothes have been recovered. The chemical analysis report is still awaited, therefore when there is evidence against the present applicant, he does not deserve discretionary relief.

5. At the outset, as regards the plea of alibi which is tried to be taken by the present applicant is concerned, it can be stated that it will be required to be proved by him at the time of trial and, therefore, that defence cannot be considered at this stage.

6. The First Information Report has been lodged by one Kishor Hastimal Kale, who is the son of the deceased. He has stated that about eight to nine months prior to the First Information Report accused No.1 Ramesh Motilal Kale and others had committed theft of sheep belonging to the deceased and for that purpose deceased

Hastimal had lodged a report. It was the cause of annoyance for the accused No.1 and others. On the day of incident i.e. 04-01-2020 at about 10.30 a.m. informant and his father were at home and they were doing some repairing work near their well. Informant asked father to bring adhesive tape from house. At that time he saw that about seven persons coming on two motorcycles. He has given names of all of them including the name of the present applicant. After they came to the house of informant, accused No.1 Ramesh told informant that his father has lodged the report against them and they were arrested due to the same, therefore they will not leave his father. He had caught hold of Hastimal but after getting himself rescued from his clutches father of the informant ran from the bandh of his land. However, he was chased by the present applicant and others and caught hold by accused No.1 Ramesh and present applicant. Thereafter, accused Alusha Kale gave stab injuries on the arm and back of Hastimal. After he fell down, he was assaulted by accused Kalkabai by fists and kicks blows. Thereafter, accused Satesh and Chattis as well as Hulya assaulted Hastimal by sticks. When the informant raised shouts at that time his mother Pankombdi and wife Tai went towards him. They were threatened by the accused not to move from the place where they were. After a

while when the informant found that his father is not making any movements so also accused No.1 found it, they got confirm about death of Hastimal and all of them went away. Thus from the First Information Report it can be seen that the entire incident was witnessed by the informant. Further the statement of his mother who had then arrived also supports her. Taking into consideration five stab injuries which were found on the person of Hastimal and the opinion is given that all can be caused by sharp edged pointed weapon and they were ante mortem. There appears to be prima facie evidence against present applicant. Unless he would have caught hold of the deceased after chasing Alusha could not have inflicted blows and further all of them had come together would show the said prima facie case. On these counts discretionary relief cannot be given to the applicant. Hence, application stands rejected.

7. It is made clear that the observations made above are for the purpose of bail and the trial Court should not get influence by any of those observations.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-