

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.72 OF 2021

Dnyaneshwar @ Sou Vishnu Raut @ Sutar,
Age 23 years, Occupation Agriculture,
R/o Sutar Aali, Dhawlas Taluka Mhada
District Solapur.

.....Applicant
(Orig.Accused No.4)

VERSUS

The State of Maharashtra,
Through Police Station Officer
MIDC City Police Station,
Ahmednagar.

.....Respondent

.....
Advocate for Applicant : Mr. N. V. Gaware
APP for Respondent-State : Mr. A. M. Phule
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
09-02-2021.**

**Date of Pronouncing The Order :
17-02-2021.**

ORDER :

1. Present applicant came to be arrested on 07-01-2020, in connection with Crime No.713 of 2019, registered with MIDC Police Station, Ahmednagar District Ahmednagar for the offences punishable under Section 396, 120-B, 341, 412, 210 of Indian Penal Code. He has filed present application under Section 439 of Code of Criminal

Procedure.

2. Heard learned Advocate Mr. N. V. Gaware for applicant and learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that though initially the First Information Report came to be filed for the offence under Section 302 of Indian Penal Code, yet after the investigation is over, the charge-sheet has been filed under Section 396, 102-B, 341, 412, 201 of Indian Penal Code. The charge-sheet is filed against seven accused and the present applicant is accused No.4. Accused No.5 Shivaji Dhanaji Patil and accused No.6 Raviraj Dnyandeo Bansode have been released on bail by this Court. The First Information Report has been lodged by the father of the deceased. He is resident of Sarola Kasar Taluka Nagar Dist. Ahmednagar. The murder is stated to have taken place near Lamkhede Petrol Pump, Nimblak By Pass Road, Nimblak Shivar Taluka and District Ahmednagar within the jurisdiction of MIDC Police Station, Ahmednagar. The First Information Report is lodged against unknown person.

4. It has been further submitted that it is the prosecution story that deceased Navnath was owner-cum-driver of the truck. He was into the business of transportation. He had taken the contract of transporting milk powder from Sonai Milk Dairy, Indapur District Pune and as per the prosecution story he was supposed to deliver the same at Assam. After the dead body was found and the investigation had started, it is the prosecution story that accused No.1 Dilip Munde and co-accused including the present applicant had chased the truck on 29-12-2019. They had done the recce about the route on which the deceased would be going, and then it is stated that, deceased was murdered near a petrol pump on by pass Ahmednagar road, thereafter the assailants had taken away the loaded truck. Thus, truck loaded with milk powder was recovered at the instance of co-accused Dilip Munde. The prosecution has collected Closed Circuit Television (CCTV) footage of various places to reach to the assailants. The present applicant was found to be travelling with co-accused Dilip Munde in his Scorpio jeep. It is further submitted that the evidence that is gathered by the prosecution would show that except the identification of the applicant in or around Sonai Mil Dairy, there is nothing on record.

The case rests on circumstantial evidence. The learned Advocate has taken this Court through the entire charge-sheet and submitted that when there is no recovery at the instance of the applicant, he need not be asked to languish in jail. Though it is the prosecution case that the present applicant had given memorandum and had shown various places where they had chased the deceased and the place where he was murdered, that discovery cannot be under Section 27 of the Indian Evidence Act. He, therefore, strongly canvassed for bail to the present applicant on the ground that there is no evidence against the present applicant and the case rests on the circumstantial evidence as well as the co-accused similarly placed have been released by this Court.

5. The learned Additional Public Prosecutor strongly opposed the application and submitted that there is ample evidence in the form of Closed Circuit Television (CCTV) footage and the present applicant and the co-accused have been identified. From the statement of the owner of the hotel, where the deceased had parked his truck for changing tyres as he wanted to take the journey till Assam, and from the statements of hotel owners where the accused persons had stayed for the night, the present applicant has been identified.

Further he has given memorandum and discovered the places where they had gone after the deceased and ultimately they had murdered the deceased. Whether it is admissible or not would be considered at the time of trial but that cannot be the ground now for the applicant to be released on bail. When there is strong prima facie case against the applicant, he need not be released on bail.

6. After going through the entire charge-sheet it can be seen that the case is based on circumstantial evidence. The investigation is over and charge-sheet is filed, that means investigation is complete. The circumstantial evidence mainly appears to be the Closed Circuit Television (CCTV) footage and the statements of witnesses who had allegedly seen the present applicant and co-accused around deceased. The alleged confessional statement leading to the discovery by co-accused may not be having evidentiary value for the present applicant. No doubt even this applicant is stated to have given memorandum and led to the discovery of spots. Though this Court reserved its rights to accept the contention of the applicant that since there is no discovery of any object from the place which is alleged to be shown by the applicant and, therefore, it cannot lead to the discovery of fact under Section 27 of the Indian Evidence Act,

yet it is certain that it is also a piece of circumstantial evidence which will have to be proved by the prosecution at the end of trial. Taking in to consideration the evidence that is gathered, so also the fact that the other two accused persons similarly situated have been released on bail by this Court in Bail Application No.976 of 2020 dated 28-09-2020 and Bail Application No.1242 of 2020 dated 18-12-2020, the applicant deserves to be released on bail. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) The applicant Dnyaneshwar @ Sonu Vishnu Raut @ Sutar in connection with Crime No.713 of 2019, registered with MIDC Police Station, Ahmednagar District Ahmednagar for the offences punishable under Section 396, 120-B, 341, 412 and 201 of Indian Penal Code be released on bail on furnishing personal bond of Rs.20,000/- (twenty thousand) with one solvent surety of the like amount.
- 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) Before submission of bail papers, the applicant

should give complete address of his residence with his mobile number. So also 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/-