

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.91 OF 2021

Sanjay Hatnya Bhosale = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.AM Gaikwad,Advocate for Applicant/s;

Mr.NT Bhagat,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 9th April, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR No.24/2020 registered with Ghargaon police station, District Ahmednagar for the offences punishable under Sections 302, 397, 394 and 452 of IPC. He has filed the present application under Section 439 of Cr.P.C.

2. Heard learned Advocate for the applicant and learned APP for Respondent-State. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

3. It appears from the FIR, which is lodged by one Sunil Baliram Pawar, who works as Waiter with Hotel Pride at Ghargaon Shivar, Tq. Sangamner that, one Aashish Chandrakant Kanade and Dhananjay

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Dattatraya Bhalerao are the owners of the said hotel. On 18.1.2020, the hotel was open around 11.00 am and Dhananjay Bhalerao was at the counter. Thereafter, he was there till 10.30 pm. Thereafter, Aashish Kanade came and, therefore, Dhananjay gave the keys of the counter to Aashish. Dhananjay had chit-chatting with his friend Sachin Baban Kajabe and went home. Thereafter around 12.30 pm, the informant closed the doors of the hotel. Aashish slept on the cot, which was near the counter and the informant went to sleep inside the hotel. He came to the hotel around 7.00 AM on 19.1.2020 and did his kitchen work. He came near Aashish around 9.00 AM, but he was not awake. The informant told to two of the hotel workers viz. Ravi Nana Raut and Akshay Janardhan Wargade to wake up Aashish and informant went in the kitchen. Ravi Raut told the informant that he found that blood had oozed from the mouth and nose of Aashish and, therefore, the informant went there. The informant then went to call doctor Aaher from Ghargaon. But the hospital was closed. Therefore, the ambulance was called one Sonu Kanhore and Ganesh Bhosale came with ambulance and they told that Aashish is dead. When the hotel was inspected, they found that rear door was broken and broken bottle of McDowell Rum was found. They also found that the counter was ransacked and amount of Rs.40,000/- was stolen. Then he lodged the report, stating that some unknown persons had committed dacoity and in that process, committed murder of Aashish Kanade.

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4. Perusal of the FIR, as aforesaid, would show that it was against the unknown persons. As regards the present applicant is concerned, a supplementary charge sheet has been filed. In fact, at this stage, it appears to be against three persons, viz. 1) Sagadya Umbarya Kale, who came to be arrested on 1.2.2020; 2) Mithun Umbarya Kale, who is stated to be absconding and ; and 3) Sanjay Hatnya Bhosale, i.e. present applicant, who came to be arrested on 21.10.2020.

5. Statements of the witnesses have been recorded in the present case, who definitely show that such incident had taken place. But none of the witnesses have stated that they had seen any one of the accused. It is all the way against unknown persons. Further, the post mortem report also gives the cause of death as " death due to hemorrhagic shock due to head injury."

6. From the entire charge sheet, it can be seen that it is based on circumstantial evidence and the alleged discovery of accused No.1, including the name of the present applicant, which can be said to be inadmissible in evidence. In his statement, accused No.1 had disclosed the name of the present applicant and then it appears that there was house search of the applicant conducted by the police, wherein one empty bottle of McDowell's No.1 Rum was found from his house. If we consider the panchanama drawn on 18.2.2021, it appears that one Kinkal Hatnya Bhosale was present

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in the house and police enquired about the present applicant. Said Kinkal disclosed that Sanjay had gone out of station. Thereafter, in presence of said Kinkal, the house was searched, which was admeasuring 10 X 10 and it is stated that below the cot, they found one McDowell's No.1 Rum bottle.

7. On the last date, a query was made since it was foreign liquor, of which, empty bottle was found, whether batch matches in view of the Rules those are under the Maharashtra Prohibition Act and record is required to be kept. Thereupon, photo copy of Form F.L.1-A in respect of Transport Pass for transport of duty paid for foreign liquor has been produced, which shows that there was one Case of McDowell's Celebration-XXX Matured Rum of Batch No. 083 which was of Sai Traders for Resale and said Sai Traders has given invoice in the name of Pride Hotel, Ghargaon, stating one case of Celebration Rum NIP ##. The important point to be noted is that in this invoice dated 28.12.2019, when the product's particulars are given, it is not stated that it is of McDowell company and the Batch number is also not stated. But the transport, i.e. TP number is said as 5493 dated 28.12.2019, which matches with the TP number of Form F.L. 1-A. This is the only piece of evidence which is against the present applicant. Even if we take it as it is; yet it is to be, as earlier stated, at the time when the house search was made. The applicant was not present, but one Kinknal was present. He has not been made as accused in this case. Therefore,

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only on the basis of statement of co-accused, the applicant need not be asked to linger in jail. Hence, the application deserves to be allowed. Hence, following order, -

ORDER

i. The Bail Application stands allowed.

ii. The applicant be released on bail in connection with CR No.24/2020 registered with Ghargaon police station, District Ahmednagar for the offences punishable under Sections 302, 397, 394 and 452 of IPC. on PR bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

iii. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

iv. The applicant shall comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

v. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE