

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 BAIL APPLICATION NO.69 OF 2021
WITH
CRIMINAL APPLICATION NO.229 OF 2021

RAJU BABAN SHIRWALE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. A.M. Gaikwad, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

Mr. Yogesh Kale, Advocate h/f Mr. R.R. Karpe, Advocate for assist to PP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09th FEBRUARY, 2021.

ORDER :

1 Criminal Application No.229 of 2021 moved for assist to PP is allowed and disposed of.

2 Present applicant has been arrested on 21.07.2020 by Shrigonda Police Station, Dist. Ahmednagar, for the offence punishable under Section 302 and 504 of the Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure, 1973.

3 Heard learned Advocate Mr. A.M. Gaikwad for the applicant and learned APP Mr. N.T. Bhagat for the respondent.

4 It has been vehemently submitted on behalf of the applicant that the investigation is complete and charge sheet has been filed. It would take long time to stand his trial. The applicant is innocent and has been falsely implicated. Perusal of the charge sheet would show that all the witnesses are police witnesses and the prosecution has contended that there is extra judicial confession to those police persons, which is inadmissible in nature. The informant has not witnessed the incident. Informant is the son of the deceased. There is no further direct or indirect evidence. First Information Report as well as the statement of wife of the deceased would show that there were cordial talks between deceased and the applicant. They had eaten groundnuts and thereafter it is stated that deceased went along with the applicant. The incident of damaging pipeline of one Kamalakar Wable is connected to the prosecution story and it is stated that the applicant was under impression that the deceased had spread the rumour that the applicant has caused that damage to the pipeline. It is then stated that the applicant took deceased along with him, just to confirm the said fact about the rumour. Further, the prosecution says that the applicant went before police and confessed the guilt. It is stated that at that time he made a statement that deceased had illicit relations with his wife, and therefore, he wanted to eliminate the deceased. This motive appears to have been planted. The applicant has a permanent place of abode. Nothing is to be recovered at his

instance, and therefore, he deserves to be released on bail.

5 Per contra, the learned APP, well assisted by learned Advocate Mr. Yogesh Kale holding for learned Advocate Mr. R.R. Karpe for the informant, submits that there is evidence against the present applicant. Though the informant was not present when the incident took place, however, he gives the account of the happenings on the day of the incident. He was at Shrigonda and received phone call from his mother at about 3.00 p.m. informing that the present applicant has taken deceased along with him towards Bhairavnath temple to confirm the truth and at that time the applicant was holding axe. The mother of the informant told that he should go to the said temple and see what has happened but then the informant did not go immediately. He gave fodder to the cattle and then went towards his house at about 4.30 p.m. Thereafter, to see his father he went towards sugarcane plateau, where one Popat Wable has taken sugarcane crop. Informant made inquiry but they could not give information, and therefore, he went to the house of applicant. Applicant's wife was present and both the children of the applicant had hugged him. After applicant saw informant he started abusing. Informant asked him, as to whether his father is there. At that time, the uncle of the applicant told that he does not know and he asked informant to go away. At about 6.00 p.m. he received phone call from one

Rushikesh Wable making inquiry, as to whether any dispute has taken place, but then informant has told that he has no idea. He then told that he had received a phone call from Police Head Constable Mr. Bade, who was making inquiry, as to who is Narendra Wable (deceased) and a person has come to Police Station and disclosing that he has committed murder of Narendra Wable. Informant went near the shop of one Balasaheb Wable in the village. Thereafter he went near the field of one Sursing Wable, at that time, police vehicle came. Present applicant was along with police and he took police in the field and indicated the dead body of Narendra Wable. Informant saw injury caused by axe on the face of his father. After applicant saw informant, he abused the informant and he was telling police in presence of informant that he has committed murder of Narendra Wable. When such confessional statement has been given by the applicant and thereafter there is evidence in the nature of statement of the mother of the informant, who had seen applicant taking deceased along with himself, that is, also required to be considered. There is statement of police witnesses, in whose presence the present applicant has given confession. Discovery of the weapon is at the instance of the present applicant. Further, the discovery is also made by the applicant of his own clothes, which were on his person at the time of commission of the crime. Therefore, that circumstantial evidence is also required to be considered. The Post Mortem Report shows, there were in all

five surface injuries on the person of the deceased and his probable cause of death is – Death due to Neurogenic shock due to Head injury in Assault. The seized weapon was referred to the Medical Officer and he has opined that the injuries noted by him, on the person of deceased, are possible by the said discovered weapon. Therefore, when ample evidence is produced on record, the applicant does not deserve any discretionary relief.

6 The contents of the FIR are already reproduced, and therefore, they are not repeated. Definitely, when the charge sheet is produced, the further physical custody of the applicant is no longer required for the purpose of investigation and under that circumstance, it is required to be noted, as to what evidence has been collected against the applicant. No doubt, there is no direct evidence against the present applicant, but the prosecution case rests on circumstantial evidence as well as the confessional statement. As per the prosecution story, as regards the circumstantial evidence is concerned, the chain starts from the fact that applicant had gone to the house of deceased, where the mother of the informant was present, she had seen axe in the hand of present applicant and she states that applicant took deceased along with him to confirm the truth in the alleged rumour, involving the applicant. It is the prosecution story that the applicant was under the impression that the deceased was behind the rumour that applicant had caused damage to the

pipeline in the field of one Wable. The further circumstantial evidence is the discovery of weapon and taking into consideration the injuries noted in the Post Mortem Report and the cause of death; together with the inspection of the seized weapon, the Medical Officer gives an opinion that those injuries are possible by the weapon, that was given for inspection. Further evidence is the discovery of the clothes of the accused, on which there were blood stains. The third circumstance is the extra judicial confession given by the applicant in presence of informant. Further, the informant was present when the accused had shown the dead body of the father of the informant to the police. In this connection the law will have to be considered by the Trial Judge, which was considered by Hon'ble Supreme Court in **Aghnoo Nagesia vs. State of Bihar, AIR 1966 SC 119**, which has been later on considered by Division Bench of this Court and in catena of Judgments including **Vistari Narayan Shebe vs. State of Maharashtra, 1978 Cri.L.J. 891**, **Bandlamuddi Atchuta Ramaiah vs. State of Andhra Pradesh, 1997 SCC (Cri.) 128**, together with Section 8 of the Indian Evidence Act. However, taking into consideration evidence, that is collected, no case is made out to release the applicant by giving him the discretion. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)