

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.132 OF 2021

Indrajeet Ramesh Kasar
Age: 25 years, Occu.: Agri.,
R/o. Walki, Tal. Nagar,
Dist. Ahmednagar

... Applicant

Versus

The State of Maharashtra

... Respondent

.....

Mr. N. C. Garud, Advocate for the applicant.
Mr. S. Y. Mahajan, APP for the respondent – State.

.....
WITH
CRIMINAL APPLICATION NO.383 OF 2021
IN BA/132/2021

Lata w/o Babasaheb Bhalsingh

... Applicant

Versus

1. Indrajeet s/o Ramesh Kasar
2. The State of Maharashtra

... Respondents

.....

Mr. N. B. Narwade, Advocate for the applicant.
Mr. N. C. Garud, Advocate for respondent No.1.
Mr. S. Y. Mahajan, APP for respondent No.2 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 4th March, 2021
Pronounced on : 23rd March, 2021

ORDER :-

. Criminal Application No.383 of 2021 filed by mother of the deceased – informant for assisting public prosecutor stands is and

disposed of.

2. Present applicant has been arrested in connection with Crime No.1123 of 2020 registered with Ahmednagar Taluka Police Station, District Ahmednagar for the offences punishable under Sections 302, 326, 120(B), 143, 147, 148, 149, 365, 324, 323, 504, 506 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

3. Heard learned Advocate Mr. N. C. Garud for the applicant and learned APP Mr. S. Y. Mahajan for the respondent – State assisted by learned Advocate Mr. N. B. Narwade representing the mother of the deceased - informant.

4. It has been vehemently submitted on behalf of the applicant that perusal of the FIR which is lodged by deceased himself would show that he has not disclosed the name of the present applicant. At that time, the offence came to be registered under Sections 143, 147, 148, 149, 365, 324, 323, 504 and 506 of Indian Penal Code, however, thereafter, prosecution appears to have come with the case that the present applicant is also involved in the matter. If the FIR is seen which is making allegations against three persons stating that when the informant was proceeding at about 8.15 p.m. on 17.11.2020 on Walki to

Amberaiwadi road and was near Kathwat Wasti, at that time, a black colour Volkswagen Vento came from the opposite side and given dash to the motorcycle on which the informant was proceeding. He says that after he fell down, three persons got down i.e. Vishwajit Ramesh Kasar, Sunil Fakkad Adsare and brother-in-law of Vishwajit. Further, he says that there were certain other persons, who had come to that place on motorcycle, threatened him and by forcibly putting in the vehicle, he was taken to an unknown place. He was assaulted by Vishwajit and Sunil by iron pipe and others had assaulted him by wooden stick. He also states that the said assault was made on the count that he had taken objection for erection of statue of Chatrapati Shivaji Maharaj. Accused No.1 – Vishwajit demanded amount of Rs.1,00,000/- to him. After assaulting him, phone call was given from the mobile of informant by said Vishwajit to informant's friend Balasaheb Kasar and it was informed that the informant has been left on Nagar-Dound road. Thereafter, the mother and friend of the informant - Rahul Husale went there and admitted him in the hospital and then he lodged the report. However, it appears that while under treatment, informant Omkar expired on 05.12.2020. In fact, no role has been attributed to the present applicant and there is no direct evidence against the present applicant. There is long standing dispute between the informant and

the family of the accused, as they are resident of the same village Walki. Possibility of implication of the present applicant cannot be ruled out. Now, the substantial part of the investigation is over and, therefore, further custody of the present applicant is not required. Another aspect that is also required to be considered that though the informant says that he was taken to Pandit Accident Care and Unique Hospital and he was given treatment for four days there, thereafter, he was infected with Covid-19 and then he was shifted to Asian Noble Hospital and thereafter, to Ruby Hall Clinic, Pune. Under such circumstance, he might have died due to Covid-19 and in that circumstance, Section 302 of Indian Penal Code cannot be said to be attracted. Applicant is ready to abide by the terms of the bail.

5. Per contra, learned APP well assisted by learned Advocate Mr. N. B. Narwade representing the mother of the deceased – informant strongly opposed the application. It is stated that the postmortem report would show that there were about 32 surface wounds and injuries sustained by the informant. Though he contracted Covid-19, but the cause of death that is given is death due to head injury with multiple blunt injuries over body. The recording of the conversation at the time of assault has been made and it is reflected in the seizure panchanama. Perusal of that conversation would show that accused No.1 and others

had intention to eliminate deceased. They had brutally assaulted him after he was abducted. The statement of the mother and friend of the informant – Rahul would also show as to under which conditions they had found the informant. Further, as regards the present applicant is concerned, there is call record between him and accused No.1 of the same time and date which indicate that he was supplying the information about the whereabouts of the deceased. Further, the statement of the mother under Section 164 of the Code of Criminal Procedure shows that after deceased was assaulted, on the third day, accused No.1 had called her on phone and stated that there are many enemies of her son in Nagar. Accused No.1 was then admitted to Vikhe Hospital, as he turned out to be Corona positive, but still he was asking about the money to the mother of the informant. Present applicant had also told the mother that she should take back the case and he would pay the entire bill of the hospital and threat was given that otherwise he would also abduct the mother of the deceased. The applicant has a criminal record. There are three cases registered against him with Kotwali Police Station, district Ahmednagar, three cases with Ahmednagar Taluka Police Station including the present one and one case with Shivaji Nagar Police Station. If the present applicant is then released on bail, who has already created terror in the vicinity, it would

hamper the further investigation as it is still pending against the absconding accused and it would also affect the moral of the witnesses.

6. Since the entire story of the prosecution is earlier stated, it is not repeated again. The deceased himself had lodged the report who was then alive and the said FIR was against two named persons and others were unnamed, but it was against some more persons also, including the brother-in-law of accused No.1 – Vishwajit. The present applicant is the real brother of accused No.1 – Vishwajit. No doubt the presence of the applicant at the spot is not stated in the FIR, however, with the background we are required to consider as to how the investigation had developed. One Ganesh Bhalsingh is stated to be the eye witness whose statement has been recorded under Section 161 of the Code of Criminal Procedure. He has also stated about the presence of Vishwajit Kasar, Sunil Adsare and five others, but then there appears to be conversation from deceased Omkar's mobile to Balasaheb, where even the mother of the informant was present. The seizure panchanama has been prepared of the mobile in which the conversation was recorded. Further, the postmortem report gives 32 surface wounds and injuries on the deceased. As regards the internal injury, it is stated that there was under scalp hematoma and in the brain, there was patchy subarachnoid hemorrhage. The opinion regarding cause of death is "death due to

head injury with multiple blunt injuries over body”. It does not say that the death is due to Covid-19, but a note has been stated that the Covid-19 Antigen test was positive. The magnitude of the offence and the manner in which the accused persons are behaving is also required to be considered. Now, accused No.1 - Vishwajit has been arrested, however, he was absconding for a considerable time as it appears and said Sunil Fakkad Adsare, one Shubham Balasaheb Lokhande, Sachin Chandrakant Bhamre and Sanket Bhausahab Bhalsingh are still absconding. The police papers also show that one accused No.8 – Santosh Appasaheb Dhotre is stated to have provided money to accused No.1 to avoid his arrest.

7. Now, as regards the role attributed to the present applicant is concerned, it is stated that the applicant was keeping a watch on the activities of the deceased and he was providing location of the deceased to accused No.1 – Vishwajit. Now, as regards accused No.1 - Vishwajit is concerned, he has made discovery of the weapon. There are call details between the present applicant and accused No.1 – Vishwajit. The obvious fact would come, that since they are real brothers there would be talks between them, but then the frequency of the talks on a particular date is tried to be highlighted by the prosecution. Further connection of the present applicant is in the statement made by the

mother of the deceased under Section 164 of the Code of Criminal Procedure when she states that even the present applicant had given her threat that she should take back the case and promise was given that he would pay the hospital bill. Thus, apart from the involvement in such a way of the present applicant and his criminal record dis-entitles from releasing him on bail. Hence, the following order :-

ORDER

. Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm