

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.193 OF 2020

Nitin Laxmanrao Adane,
Age 26 years, Occupation Business,
R/o Bhoi Galli, Parbhani.

...Applicant

VERSUS

The State of Maharashtra.

...Respondent

.....
Advocate for Applicant : Mr. Joydeep Chatterji
APP for Respondent-State : Mr. N. T. Bhagat
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Order :
19-01-2021.**

**Date of Pronouncing The Order :
27-01-2021.**

ORDER :

1. Present applicant has been arrested by Nanalpeth Police Station, Parbhani in connection with Crime No.132 of 2019 dated 04-04-2019, for the offence punishable under Section 302, 201 read with 34 of the Indian Penal Code. Now the investigation is over and charge-sheet has been filed. Case has been committed to the Court of Sessions and it has been numbered as Sessions Trial No.135 of 2019 which is pending before learned Additional Sessions Judge, Parbhani.

2. Heard learned Advocate Mr. Joydeep Chatterji for applicant and learned Additional Public Prosecutor Mr. N. T. Bhagat for respondent- State.

3. It has been vehemently submitted on behalf of the applicant that the allegations in the First Information Report are afterthought and only with a view to implicate the applicant. Informant is the step-brother of the present applicant. It is stated that there was dispute between the deceased who was also the step-brother of the present applicant and the applicant and his real brother. Perusal of the charge-sheet would show that there is only one statement of an eye-witness which was recorded on 27-04-2019, though it is alleged that the crime has been committed in broad day light. The said eye-witness is alleged to be the rickshaw driver who had left deceased near the place of offence. He was not knowing the accused persons and no identification parade appears to have been held. The police have tried to show mother of the informant as eye-witness, however the circumstances would suggest that she could not have been present at all at the spot. Her presence has not been told by the other independent eye-witness. When the mother herself had received information from other persons then those other persons

would be the eye-witnesses, but their statements have not been recorded. The post mortem report suggest two types of injuries, one is chop wound and another is incised wound. Both the injuries cannot be caused by only one weapon, though in this case the police have seized weapon like Sattur under Section 27 of the Indian Evidence Act. There could not have been a motive to commit murder of the deceased though he was step-brother of the applicant. Since the investigation is over and the case is awaiting trial, the further physical custody of the applicant is not required. Learned Advocate for the applicant, therefore, canvassed for bail under Section 439 of Code of Criminal Procedure.

4. Per contra, learned Additional Public Prosecutor strongly opposed the application stating that the material evidence that has been collected against the present applicant is sufficient to try him for the offence punishable under Section 302, 201 read with 34 of the Indian Penal Code. On the day earlier to the incident, there was dispute between deceased, applicant as well as co-accused at about 11.00 p.m. The said dispute was on the count as to who should put table for sale of articles for festival Gudhi Padwa. The dispute was between the real brother of the informant who are the step-brothers

of the applicant and co-accused. The informant had intervened and told them that they should not fight for trifle cause. But at that time the present applicant had given threat in presence of informant to the deceased that he would eliminate him. On the next day at about 08.00 to 08.15 a.m. i.e. on 04-04-2019, the deceased took auto rickshaw from his house and loaded it with the articles to be sold for festival of Gudhi Padwa and the informant went to fish market. He was then informed on his mobile by his friend Akash More that he should go to Gujri Bazar where deceased had gone as there was dispute. When he went there, he found blood on the ground in front of a jewellers shop. He was told that his brother was assaulted with sharp weapon and he has been taken to Government Hospital, Parbhani. He went to hospital and saw the injured brother. The doctors declared him as dead and then he lodged the report. He also states that there was dispute between deceased and accused applicant in 2017.

5. Though the informant is not an eye-witness, yet it can be seen that the statement of his mother would show that she has witnessed both the accused i.e. including the present applicant assaulting her son. Further, statement of one Mohammad Abdul Mukhid Abdul Alim

would show that he was present near the spot. He had seen towards the persons after he had heard cries of a person. He found that a girl sitting on two wheeler was shouting and she had giddiness. The witness caught her and saw towards the shop selling articles that one person was being beaten by two young persons with the help of Sattur. No doubt in his entire statement he has not stated the names of the present applicant and co-accused. But then he says that he came to know about their names later on and thereby he has definitely then given the names of the present applicant and co-accused. Thus there is direct evidence against the present applicant. Whether the identification parade was held or not, and in absence of it, how the statement of said witness can be held admissible, would be the lookout at the time of trial.

6. The post mortem report shows that there were about eighteen surface injuries on the deceased. Out of them eight are chop wounds, nine are incised wounds and one is linear abrasion. They appear to be on the vital parts of the body. The cause of death has been given as, "hemorrhagic and shock due to multiple injuries." Thus, it is beyond doubt that the death is homicidal in nature.

7. The further pieces of evidence against the present applicant

are the memorandum and discovery of iron Sattur by co-accused Sachin Aadne, and as regards present applicant is concerned, it is discovery of his pant under Section 27 of the Indian Evidence Act. His pant had blood stains. The statements of other witnesses are either on the point of earlier dispute or in respect of the subsequent events of the incident. Statement under Section 164 of Code of Criminal Procedure of the witnesses have also been recorded. The weapon used in the commission of the crime was sent to Medical Officer and he has opined that the wounds which were noticed on the body of the deceased are possible by weapon that is seized. Thus, when such evidence has been collected and is before Court then the manner in which the offence is stated to be committed, the motive behind it etc., does not entitle the applicant from being released on bail. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-