

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.202 OF 2021

SOMESH MUKUNDA KUMAWAT

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. C.V. Dharurkar, Advocate for the applicant

Mr. M.M. Nerlekar, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 17th MARCH, 2021.

ORDER :

1 Present applicant has been arrested, in connection with Crime No.31/2020 dated 09.02.2020 registered with Vedant Nagat Police Station, Dist. Aurangabad, for the offence punishable under Section 307, 436, 506 of the Indian Penal Code, 1860. He has filed present application under Section 439 of the Code of Criminal Procedure, 1973. It will not be out of place to mention here that the charge sheet is filed and Regular Criminal Case No.649/2020 is pending before Chief Judicial Magistrate, Aurangabad.

2 Heard learned Advocate Mr. C.V. Dharurkar for the applicant and learned APP Mr. M.M. Nerlekar for the respondent.

3 It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. It was lodged initially under Section 307, 436, 506 of the Indian Penal Code, on the basis of the statement given by informant (later on succumbed to injuries) Varun Mukund Kumawat. The present applicant is his step brother. It is stated that they both were residing together. After he had come from his work on 08.02.2020, he as well as the applicant had taken dinner after consuming liquor. Thereafter, there was quarrel between the deceased and the present applicant. Amount of Rs.200/- was due from the deceased to the present applicant and the present applicant was demanding the repayment of the said amount. Deceased states that he did not give him amount of Rs.200/- but gave only Rs.100/-, then the applicant started quarrel with him. He gave threat that he would kill the deceased. Deceased went asleep. Applicant was in the house but then deceased woke up when he found that the house was burning. He found that petrol was poured upon his person. He tried to open the door, but it was latched from the outside, and therefore, could not open it. He started shouting. He caught fire but then the persons, who had gathered outside, opened the door. He found his cousin brother Yogesh Chhalare outside, who extinguished the fire. Police vehicle was called and then he was shifted to GHATI Hospital, Aurangabad. He has thereafter lodged the report.

4 The learned Advocate for the applicant submits that when the informant-deceased contends that he had fallen asleep then how he was able to know that the present applicant has done the act, is a question. Merely because there was earlier dispute between both of them, it cannot lead us to the conclusion that the fire would have broke due to the present applicant. Statements of witnesses have been recorded. Now, every investigation is over. Applicant is ready to abide by the terms of the bail. Further, the injury certificate shows that deceased Varun had only 40% of burn injuries, and therefore, it cannot be stated that the death was due to the burns. Possibility of accidental death cannot be ruled out, and therefore, the applicant deserves to be released on bail.

5 Per contra, the learned APP strongly opposed the application and submitted that there is ample evidence against the present applicant. Apart from the fact that the deceased himself had lodged the said FIR, which is admissible under Section 32 of the Indian Evidence Act. It can be seen from the medical certificate that the burn injuries are to the extent of 40% over his chest, head, both arms, forearm, chest and abdomen on ventral (front side) and also on the front side of the neck. After the investigation was done the charge sheet was filed for the offence punishable under Section 307, 436, 506 of the Indian Penal Code only, but it appears that thereafter informant has expired, and therefore, there is ample evidence in the nature of spot

panchnama, injury certificate and statements of witnesses, who came there after hearing shouts of the informant. Further, the immediate disclosure of the applicant regarding the circumstances which caused burn injury to deceased narrated to the witnesses are also required to be considered, and therefore, the applicant does not deserve any kind of sympathy.

6 At the outset, it is to be noted that when the charge sheet has been filed, it was under Section 307, 436, 506 of the Indian Penal Code. No doubt, it appears that, at that time, the informant sustained 40% burn injuries and later on almost after three months informant has expired. But then he was specific in saying that he lodged the report, petrol was poured on his person and there was latch to the door of the house from the outside. It was opened by the persons from outside who had gathered at the spot after hearing his shouts. Those statements are corroborating the said fact about opening of the door of the house of the informant from outside and extinguishing the fire caught to the clothes of deceased. When informant and the applicant were residing in that house, when it was found that the said house was latched from outside, that too, at night time, then it may amount to custodial death. Further, it is with the background that there was quarrel between the informant and the applicant just prior to the informant went asleep. Pouring of petrol and then igniting a burning match stick, throwing it on him or making such environment to catch the fire, whether amounts to

knowledge that those acts would cause death of a person, would be appreciated by the Trial Court at the final stage. Spot panchnama makes a categorical statement that a steel jug was found at the spot and the jug had petrol smell. The possibility of taking out petrol from the vehicle in that jug for pouring it cannot be ruled out. Another fact to be noted is that what was found burnt was the mattress, blanket, carpet, floor below the carpet and certain part of the wooden furniture. Certain article has been recovered under Section 27 of the Indian Evidence Act from the present applicant. There are statements of witnesses regarding hearing of shouts by the informant and when the fire was extinguished, disclosure by the informant about the cause of fire. Therefore, when there is ample evidence against the present applicant, he does not deserve the discretionary relief of grant of bail. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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