

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

911 BAIL APPLICATION NO. 218 OF 2021

**MOHAMMED TAUSIF S/O. MOHAMMED HAROON
VERSUS
THE STATE OF MAHARASHTRA**

Shri. S. R. Bagal, Advocate h/f Shri. B. N. Gadegaonkar,
Advocate for the applicant
Shri. V. M. Kagne, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 13th OCTOBER, 2021**

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with CR No. 252 of 2020 registered with Vimantal Police Station, Dist. Nanded under Sections 302, 201, 34 of the Indian Penal Code and under Sections 3/25 and 4/25 of the Indian Arms Act.

2. It is the prosecution case that on 2nd August, 2020 the deceased Vicky Chavan, one Ingale and witness Ranjyotsing Jagendrasing Sukhai were riding motorcycle. Motorcycle was being driven by witness Ranjyotsing

Jagendrasing Sukhai. At 8 p.m. they came to Shankarrao Chavan square on the road in front of Gurudwara. A little ahead of the said square, a four wheeler gave dash to the motorcycle of the deceased. The motorcycle skidded and alongwith the motorcycle witness Ranjyotsing was dragged. The deceased Vicky Chavan and Ingale fell down. The offending four wheeler's head lights were on. Some persons alighted from the motorcycle. They were armed with swords and one of them said 'Kailasbhau fire'. Witness Ranjyotsing ran away. At that time he heard the sounds of gun shots. Thereafter, he went to the police station. This incident was informed to the sister of the deceased. Sister of the deceased lodged FIR on the basis of which offences as aforesaid came to be registered.

3. Learned counsel Shri. S. R. Bagal h/f Shri. Gadegaonkar, learned counsel for the applicant submits that the only evidence against the applicant is the memorandum. On the basis of the memorandum knife was recovered. He submits that according to the prosecution the accused gave

the memorandum that after the death of the deceased, the applicant assaulted the deceased. He submits that post-mortem report indicates that there are two post-mortem injuries.

4. Learned APP Shri. Kagne submits that there is statement of witness recorded under Section 164 of the Code of Criminal Procedure. The name of the witness is Suraj Khirade who is the friend of the deceased Vicky Chavan. He states that applicant had called up witness Suraj Khirade stating therein that Vicky Chavan was murdered by him and others and that this witness would also be done away with in similar manner. He further submits that mobile number of the deceased has been stated by the brother of the deceased and from the Call Details Record (CDR) it is clear that from the same number call was made to other accused. Prosecution is coming out with the theory of conspiracy. He submits that considering this evidence application deserves to be rejected.

5. Charge-sheet is filed. Therefore, no further detention of the applicant is necessary. The only evidence against the applicant is in the nature of memorandum. The words he stabbed the dead body are inadmissible in evidence. Only knife is recovered. There are two post-mortem injuries on the person of the deceased. None of the witnesses say that applicant was present at the spot. There is no evidence to connect the applicant with the offence. The only evidence against the applicant is the statement of brother of the deceased by the name of Suraj Khirade. His statement shows that applicant had called up witness Suraj Khirade and had said that Viky Chavan was murdered by him and others. CDR record has been collected by the police. It does not indicate that any such call was made. In view of this, I am inclined to release the applicant on bail. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 30,000/- (Rupees Thirty Thousand only) with

one solvent surety in the like amount in connection with CR No. 252 of 2020 under Sections 302, 201, 34 of the Indian Penal Code and under Sections 3/25 and 4/25 of the Indian Arms Act registered with Vimantal Police Station, Dist. Nanded. .

3. Application is disposed of.

4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp