

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.249 OF 2021

VIKAS S/O BATHUWEL LALZARE
VERSUS
THE STATE OF MAHARASHTRA

.....
Mr. B. R. Kedar, Advocate for the applicant.
Mr. M. M. Nerlikar, APP for the respondent.
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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 16th March, 2021
Pronounced on : 22nd April, 2021

ORDER :-

. Present applicant is accused No.1, who came to be arrested on 30.10.2020 in connection with Crime No.514 of 2020 registered with Ambad Police Station, Dist. Jalna for the offence punishable under Section 302 read with Section 34 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. B. R. Kedar for the applicant and learned APP Mr. M. M. Nerlikar for the respondent.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. He has nothing to do with the

incident that had occurred, in which the husband of the informant and the lady had expired. Information has been lodged by one Radha Bhagwat Harbak, who has stated that she had got married with Bhagwat on 09.05.2016. She has two daughters from Bhagwat. Bhagwat had illicit relations with Mariya Lalzare. Mariya's husband had expired about 9 to 10 years ago and she was residing with her children in her matrimonial home. Bhagwat and Mariya had fled away on 30.03.2019. When both of them had gone to Aurangabad, missing complaint was lodged by the mother of Bhagwat and father-in-law of Mariya in respect of their respective missing. Thereafter, they both were brought back by Jalna police on 12.04.2019 from Gujarat. Mariya went to her matrimonial home, whereas Bhagwat continued to stay with the informant. After sometime, there was threat to kill Bhagwat by father-in-law and brother-in-law of Mariya including the present applicant. FIR to that extent was lodged with Ambad Police Station on 16.04.2019. Mariya had come to the house of Bhagwat and told him that her in-laws would kill them and, therefore, she and Bhagwat again went missing. Again Mariya's father-in-law had lodged missing report. They again went together to Ambad Police Station on 24.06.2020 and since then Mariya was residing in the house of Bhagwat. Her father-in-law used to call her to reside with them, but she had refused. Bhagwat was

president of Lalbabta Union. There was a meeting of his party on 28.10.2020. Many people, who intended to attend the said meeting/agitation, were sent by him in three vehicles, however, he and Mariya went around 10.30 a.m. on motorcycle. Around 11.30 a.m. one Vishnu Jadhav went to the house of Bhagwat and informed that there is accident to the motorcycle of Bhagwat and Mariya and both are lying on the ground in injured condition. Therefore, mother of Bhagwat went to the spot and found that they were seriously injured. Ambulance was called and while they were being taken to Jalna Hospital, they both expired. Prior to that, Bhagwat was conscious and disclosed that present applicant had caused the said accident intentionally by moving tractor towards their direction and then by crushing them, the injuries have been caused. Thus, the informant has stated that the present applicant has committed murder of her husband Bhagwat and said Maria.

4. After bringing the contents of the FIR to the notice of this Court, learned Advocate for the applicant submitted that if the postmortem reports of the deceased are considered, then it does not say that there was any kind of crush injury occurred to them. The injuries those are noted on the body of the deceased are definitely possible by a vehicular accident. But, when now the prosecution intends to come with the case

that the said accident was in fact a murder that is by giving dash with tractor to the motorcycle and then it is stated that the tractor was caused to run over the body of deceased persons, then the injuries should correspond to that aspect. Though the mother of deceased Bhagwat – Sitabai, in her statement under Section 161 of the Code of Criminal Procedure, states that the manner in which the incident had taken place was disclosed to her by her son Bhagwat, it appears to be the improbable story for the reason that the person who was along with her i.e. Madhukar has not stated this fact in his statement under Section 161 of the Code of Criminal Procedure. It was tried to be pretended that Madhukar is the first person to reach the place, but if we consider the statement of Madhukar, he states that the mother of deceased was already present when he went there. Further, the collection of evidence would show the statement of one Gajanan Tekale, who states that on the day of incident, when he was proceeding from the same road, at that time, he saw the present applicant near custard apple garden of one Marwadi on Chapadgaon road. He asked present applicant as to why he is there. It was told by the present applicant that the battery of the tractor is down. He has not witnessed the alleged dash between the two vehicles. Another witness Aniruddha has stated that he found father of the present applicant (father-in-law of Mariya) standing near Baniyan

Tree. Thus, the entire charge-sheet would show that there is no direct evidence against the present applicant and merely because of the earlier dispute, it appears that he has been roped. Now, the investigation is complete and charge-sheet is filed. Therefore, further physical custody of the present applicant is not required. He deserves to be released on bail.

5. Per contra, learned APP strongly opposed the application and submitted that the postmortem report of both the deceased persons would show that they had received the injuries, which were to the vital part of their body. Further, if we see the spot panchanama, then it can be seen that the road was wide enough. There was no such ditch on the road which would have caused either any jerk to the vehicle or any such act which will cause accident. On the contrary, if we consider the spot panchanama together with the panchanama of inspection of the tractor and motorcycle, then it would reveal that there are corresponding damages to the vehicles. There is also statement of the witness, who had seen the present applicant at the relevant place, at the relevant time. The presence of the present applicant at that place could not have been natural. The background is required to be considered that though Mariya was married to the brother of the present applicant, the entire village was having knowledge that Bhagwat had illicit relations with

Mariya. The present applicant is the brother-in-law of Mariya. He and his father were annoyed with Bhagwat and even earlier also they had given threat to kill Bhagwat. Twice, Bhagwat as well as Mariya had fled away and it may be a possible fact that the present applicant and his father felt that their family has been defamed due to the said acts of fleeing away by Mariya with deceased – Bhagwat. Therefore, there is motive for the present applicant to commit the said offence. Vehicle panchanama report would show that the iron guard of the front side of the tractor had bent and then it has been damaged till the radiator and the dent is to the extent of 3 feet. There is corresponding damage to the motorcycle. It is not a head on collision, but the tractor was brought from the opposite side of the motorcycle and then suddenly tractor took its wrong side and gave dash to the motorcycle in the middle. Even at the time of drawing panchanama, the vehicles were re-arranged in such a manner as to whether the damage could have been done due to the said dash or not. When it is a case of double murder and the offence is serious, the present applicant does not deserve any kind of sympathy.

6. At the outset, the contents of the FIR are already stated and, therefore, they are not repeated here. The fact that is required to be considered is that it appears that though the informant is the wife of Bhagwat, she had allowed Mariya to reside with them in spite of having

knowledge of the fact that there is illicit relationship between Bhagwat and Mariya. She has also stated that twice her husband had fled away with Mariya and then she also states about the alleged threat given by the present applicant and family members. However, it is to be noted that the said alleged threat is stated to have been given somewhere on 16.04.2019 and complaint application was given to Ambad Police Station at that time. Thereafter, it appears that Bhagwat himself had lodged a report with Superintendent of Police Jalna on 18.10.2019. When Bhagwat and Mariya had gone for the first time, it was around 30.03.2019 and both of them were brought back from Gujarat by police on 12.04.2019. It appears that immediately thereafter the complaint application was given to Ambad Police Station. The respondent – State has not brought on record as to what action was taken in respect of complaint lodged by the deceased. It is also not stated, nor any document has been produced along with the charge-sheet showing that after that complaint application was filed; the police had called the present applicant and/or the family members were warned from taking any such action or it is also not brought on record that any permission under Section 155 (2) of the Code of Criminal Procedure was taken by the police. If the alleged threat was so serious, then Bhagwat had the option to lodge complaint with the Judicial Magistrate. Further, it

appears that on 18.10.2019, Bhagwat himself had lodged report/complaint with Superintendent of Police, Jalna. Copy of that application is not annexed along with the charge-sheet though it appears that the non-cognizable report lodged by Bhagwat and Mariya are produced on record. How much the threat was persistent is a question.

7. Now, the prosecution story is that the present applicant has given intentional dash of the tractor to the motorcycle driven by Bhagwat on which Mariya was pillion rider and then after giving dash, when they fell down, it is stated that the tractor was made to run over them. This information is stated to have been given by Bhagwat in injured condition to his mother. Statement of his mother – Sitabai is to that effect. The impression that is given from her statement under Section 161 of the Code of Criminal Procedure is that when Bhagwat was lying on the road, said disclosure has been given by him to the mother, whereas in the FIR, though the informant was not present at the site at any point of time, shows that Sitabai had informed her that when Bhagwat was being taken to hospital in Ambulance, at that time, he had made that disclosure. First of all as regards the statement that is given is, “मारीया ही बेशुध्द होती आणि भागवत बोलत होता. त्याने मला सांगितले की ते दोघे जात असतांना समोरुन अचानक विकास लालझरे हा ट्रॅक्टर घेवुन येत होता त्याने ट्रॅक्टर जोरात चालवुन मुद्दाम आमच्या मो. सा.ला धडक देवुन खाली पाडले व चिरडुन टाकुन ट्रॅक्टर सोडुन पळुन गेला आहे.” Depicting

thereby it was tried to be stated that they were crushed under the tractor. However, the postmortem report of Mariya, whose name appears to have been given as Nisha Vinod Lalzare would show that in column No.17 there are following injuries :-

- (I) Deep extensive CLW from left cheek to mid level and left lateral neck wall, vertical 14cm x 5cm x 4cm, cutting left external carotid artery.
- (II) Contusion over right side forehead 6 x 5 cm.
- (III) Abrasion right forearm 4 x 2 cm near wrist.

The postmortem report of Bhagwat would show that in column No.17 there are following injuries :-

- (I) Compound fracture to right ankle joint
- (II) Compound fracture to right tibia and fibula
- (III) Contusion over nose 3 x 2 cm.
- (IV) Fracture to nose bone.
- (V) Contusion to right arm 5 x 4 cm.
- (VI) Contusion to right side of occipital region 6 x 3cm.

8. The final cause of death of both of them is “due to hemorrhagic shock with head injury” and there is absolutely no mention about any crush injury. Further, the FIR as well as Sitabai’s statement would show that one Vishnu Jadhav had given information to them about the incident. For the reasons best known to the investigating officer, he has

not recorded statement of Vishnu Jadhav. The question is as to who had noticed the accident first, because none of the witnesses have actually seen the impact between two vehicles. Madhukar Sakharam Harbak had also come to that place at later point of time. Another fact to be noted is that after Vishnu Jadhav had allegedly informed Sitabai and the family members, she states that she went to the place by whichever mode of transportation was available to her. She has not stated exactly, which vehicle she had taken and who was with her. The statements of other witnesses recorded under Section 161 of the Code of Criminal Procedure do not corroborate to the fact which she has stated that she came to know about the manner in which the incident took place from Bhagwat. She intends to indicate that till that point of time Bhagwat was alive and conscious.

9. It appears that the prosecution extensively intends to rely on the statement of one Gajanan Tekale and Aniruddha Madhukarrao Harbak. This Aniruddha appears to be the son of Madhukarrao Harbak. Aniruddha states that he had seen accused No.2 – Bathuwel i.e. father of the present applicant standing near a Baniyan tree in the village. Now, he has not stated as to what was the distance between the spot and the place where he found accused No.2. Gajanan Tekale states that when he was on Raniunchegaon to Chapadgaon road near Gairan which is near

custard apple garden of one Marwadi, at that time, he found present applicant along with tractor. This is stated to have seen by him around 10.00 a.m. At that time, the present applicant told him that due to the damage to the battery of the tractor, he is standing there. Except this, he doesn't say anything more.

10. Learned APP has tried to say that the CDR between both the accused persons would show that on the relevant day, at the relevant time, there are many calls in between both of them and it is stated that thereby they were in touch with each other getting the location of deceased. That CDR will have to be proved by the prosecution during the course of the trial. The spot panchnama does not make a mention of tyre-marks. Therefore, with this kind of evidence, the applicant need not be asked to remain in jail. Since the investigation is over, it would take long time to conclude the trial. Hence, further physical custody of the applicant is not required. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) Applicant – Vikas s/o Bathuwel Lalzare, who has been arrested in connection with Crime No.514 of 2020 registered with Ambad Police Station, Dist. Jalna for the offences punishable under

Sections 302 read with 34 of Indian Penal Code, be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

III) He shall not tamper with the evidence of the prosecution in any manner.

IV) He shall not indulge in any criminal activity.

V) He shall not enter the jurisdiction of village Chapadgaon, Tq. Ghansavangi till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number to the trial Court as well as to the investigation officer. So also, he should comply with the requirements under paragraphs No.12(1) to (6) of Chapter I of Criminal Manual.

VI) It is made clear that the observations made are restricted for deciding bail application only and the Trial Court shall not get influenced by any observations and decide the matter on its own merits taking into consideration the evidence that would be led by the prosecution.

VII) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]