

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 BAIL APPLICATION NO.179 OF 2021
WITH APPLN/562/2021 IN BA/179/2021

PARMESHWAR DEVRAO GAWANDE
VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicants : Mr. Devakate Anant R
Mr. NT Bhagat, APP for Respondent-State;
Mr.VB Madan-Patil, Adv. To assist APP.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 1st March, 2021.

PER COURT :-

1. The Criminal Application No.562/2021 moved to assist APP is allowed and disposed of.
2. Present applicant has been arrested on 10.1.2021 in connection with CR No.8/2021 registered with Bhokardan police station, Tq. Bhokardan, District Jalna, for the offences punishable under Sections 302,323, 324, 327, 504, 506 read with 34 of IPC. The present application has been filed under Section 439 of Cr.P.C.
3. Heard. Learned Advocate Mr.Devkate for the applicant and learned APP Mr.NT Bhagat for Respondent-State.
4. It has been vehemently submitted on behalf of the applicant that, the FIR has been lodged by the injured deceased himself on 9.1.2021 and at that time, taking into consideration the injury that was sustained by him, offence under

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Section 324 with other sections of IPC, was registered. However, deceased informant expired at 00.05 hrs on 10.1.2021 and thereafter offence under section 302 of IPC came to be added. Perusal of the FIR would show that only presence of the present applicant has been stated and the motive is stated to be old enmity. No specific role has been attributed to the present applicant. After the applicant was arrested, he has undergone the police custody. Nothing has been recovered at his instance. Under such circumstance, further physical custody of the applicant is no longer required for the purpose of investigation and, therefore, he deserves to be released on bail.

5. The learned APP, well assisted by learned Advocate Mr.Madan Patil, submits that the act was done by all the three accused persons in furtherance of their common intention. Though the FIR states that the assault was by accused-Sudhakar and the recovery of the spade, which was used as murder weapon, is from him; yet the common intention, the applicant was sharing with him, is required to be considered. The investigation is still in progress and already the relatives of the present applicant are indulging in activity of tampering with the evidence. Non-cognizable offence vide No.58/2021 under Section 506 of IPC has been registered in that respect. The clothes of the present applicant have been seized at the time of his arrest and those clothes have been send for chemical analysis. Possibility of more evidence against the present applicant cannot be

ruled out and, therefore, the applicant does not deserve to be released on bail.

6. At the outset, it can be seen from the police papers those have been made available that substantial part of the investigation appears to be over. The information was lodged by the deceased himself and it came to be recorded on 9.1.2021. The FIR states that the information that was received by the police station was at about 21.00 hrs on 9.1.2021 and the actual FIR came to be registered at 23.54 hrs. It is specifically stated in the FIR that after the incident, the informant had gone to the police station alone and then he was referred to the medical examination to Government hospital, Bhokardan. After getting treatment, he came back to the police station and then lodged the said report. From the statements of the witnesses, it appears that after some time he again developed the problem and he was required to be taken to Suman hospital at Sillod. He was then referred to Ghati hospital, Aurangabad and when he was being shifted in an ambulance and the ambulance was near phulambri village, his health was deteriorated and after he was taken to Ghati hospital, Aurangabad, at the time of admission itself, he was declared dead. All these aspects are required to be taken into consideration. But, then when he himself had lodged the report, he has stated that he was assaulted by the spade by co-accused Sudhakar. As regards the role attributed to the present applicant is concerned, he has stated that others had made him to lie on the ground and then

assaulted. He has not stated that any weapon was used by the present applicant. The police papers show that the discovery of the spade is at the instance of co-accused Sudhakar. No doubt, the clothes of the present applicant have also been seized and have been sent for chemical analysis but most of the witnesses have stated that they gathered the story from the informant himself and there appears to be no eye-witness to the incident. As regards the post-mortem is concerned, column No.17 in respect of surface wound and injuries discloses three injuries, as follows, -

"1. Contusion present over mid-portion of frontal region in midline, 8 cm above glabella of size 6 cm X 4.5 cm, faint reddish;

2. Lacerated wound superimposed over injury No.1 over mid-portion of frontal region in midline, 2.5cm X 0,7cm X muscle deep, vertically placed;

3. Lacerated wound superimposed over injury No.1, 2cm right lateral to injury No.2 of size 1.5cm X 0.5cm X muscle deep, vertically placed"

7. Further, as regards column No.19, it is stated that, there was under scalp haematoma present over frontal region corresponding to the injury Nos.1, 2 and 3 in column No.17. The situation of the brain is stated as "Diffused subarachnoid hemorrhage present over both frontal-parietal lobes. Further, in column No.23 itself, it

is stated that the injury Nos.1 to 3 in column No.17 with its internal injuries were sufficient to cause death in ordinary course of nature individually and collectively and, therefore, opined cause of death of the deceased as "Head injury".

8. Taking into consideration the contents of the FIR and the post-mortem report, it is certain that death of the informant was caused due to head injury, which appears to have been caused due to the blow of the spade by co-accused Sudhakar. Further, it appears that after the discovery of the spade, the weapon was referred to the medical officer for opinion and it has been opined that, injury Nos.1 to 3 noted by the Medical Officer in column No.17, are possible by the said weapon.

9. Though the above said evidence is coming on record; yet as regards the present applicant is concerned, the informant has not specifically stated that any weapon was used by the present applicant. In his statement under section 164 of Cr.P.C., witness - Gajanan Aananda Gawande has tried to say that the deceased had given a phone call to him and informed that he was assaulted by all the three accused on his head and chest by the spade. However, it is to be noted that such statement is not made by the informant himself in his FIR. There is no recovery from the present applicant of any such weapon. Under such circumstance, ground is made out to release the applicant on bail.

10. Now, as regards the apprehension, that is

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expressed in respect of tampering with the evidence and non-cognizable offence, which has been registered, it makes allegation against one Madhukar Sukhdeo Gawande; Tuljabai Sukhdeo Gawande and Chaya Parmeshwar Gawande, who appear to be related to the present applicant and it is in respect of the alleged incident dated 17.2.2021. But the NC was lodged on 19.2.2021. Thus, there appears to be delay of two days in lodging the NC and further, the report that is submitted by the Investigating officer to learned APP, it is not made clear as to whether he has sought permission from the concerned Magistrate under Section 155 of Cr.P.C. When there is provision under the law to curb such activity, then, without taking such recourse, merely filing it just to oppose the bail application, it cannot be looked into.

11. At the same time, safety of the witnesses will have to be ensured and, therefore, stringent restrictions/conditions are required to be imposed on the present applicant as he is resident of the same village. With these observations, following order is passed, -

ORDER

- i. The application stands allowed;
- ii. The applicant – Parmeshwar s/o Devrao Gawande be released in connection with CR No.8/2021 registered with Bhokardan police station, Tq. Bhokardan, District Jalna, for the offences punishable under Sections 302, 323, 324,

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327, 504, 506 read with 34 of IPC on PR of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

iii. The applicant shall not indulge in any criminal activity nor he shall try to tamper with the evidence of the prosecution in any manner.

iv. The applicant shall not reside at village Kolegaon and shall not visit the said village till conclusion of the trial.

v. Along with submitting the bail papers before the learned Trial Judge, the applicant shall give detailed address of the place where he intends to reside till the end of the trial. He should also give that information to the Investigating Officer along with the mobile number and shall comply with the requirements under para 12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vi. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV