

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 BAIL APPLICATION NO.272 OF 2021

BHANUDAS MAROTRAO MOLAKE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. BN Magar, Adv. h/for Mr.
Londhe Shashikant S
Mr. NT Bhagat, APP for Respondent-State

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30th March, 2021.

PER COURT :-

1. Present application has been filed by accused No.2, who has been arrested on 27.5.2020 in connection with CR No.128/2020, registered with Aundha Nagnath police station, District Hingoli for the offences punishable under Sections 302, 323, 504, 506 read with 34 of IPC.

2. Heard learned Advocate for the applicant and learned APP for Respondent – State.

3. It has been vehemently submitted on behalf of the applicant that even if the prosecution story is taken as it is, the allegations against the present applicant are that he had abused and given fists blows to the deceased. The allegations regarding fatal blows are in respect of co-accused Dinesh. Now, the entire investigation is over and charge sheet is

(2)

filed. The applicant is aged 42 and he is an earning member of the family and, therefore, he be released on bail.

4. The learned APP strongly opposed the application and submitted that specific role has been attributed to the applicant. Further, unless there would have been common intention, the applicant would not have remained present there. There was a trifle quarrel between the present applicant and the informant. As that dispute was trifle, no FIR was lodged. However, taking into consideration that grudge in mind, the accused persons have committed the alleged crime. Dinesh has stabbed the deceased – Madhav. The murder weapon, i.e. knife, has been discovered by Dinesh. The post-mortem report would show that there were in all six surface injuries and most of them are stab injuries. The probable cause of death that is given is,—" cardio respiratory arrest due to excessive bleeding leading to hemorrhagic shock and death." The statements of the witnesses, including the eye-witnesses have been recorded. So also their statements under Section 164 of Cr.P.C. have been recorded. Therefore, when there is ample evidence against the present applicant, he does not deserve the discretionary relief.

5. At the outset, it is to be noted that the FIR was lodged against four accused persons. Two of them are juvenile in conflict with law and under such circumstance, the charge sheet, which is filed

(3)

in this case now, is against only two adult members. The incident appears to have been taken place due to some trifle quarrel. The informant categorically states that on 19th May, 2020 itself in the afternoon, he could notice that the present applicant and his son accused Dinesh were in a mood to raise the quarrel. But, then the informant says that he had no idea that they would kill Madhav. Thereafter, at about 10.00 pm on 20th May, 2020, Madhav was called by Dinesh under the pretext that he wants to talk. But then, the informant and his another son – Aadinath raised suspicion about the quarrel and, therefore, went near the place, which was near the water tank and then they saw that accused Dinseh was asking Madhav as to why his father had raised the quarrel with Dinesh's father. As regards the present applicant is concerned, it is stated that he had given slap and fists to deceased Madhav. Dinesh had stabbed Madhav with knife and when the informant and Aadinath went towards Madhav, the four accused persons ran away.

6. Statements of Aadinath under Section 161 of Cr.P.C. as well as 164 of Cr.P.C. are almost on the same line. However, in his statement under Section 164 of Cr.P.C., he has added that the present applicant and other juvenile in conflict with law had caught hold of Madhav. Then Dinesh had stabbed Madhav. The discovery of the weapon is by Dinesh. Though the post mortem report clearly says that Madhav's death is homicidal in nature, taking into consideration the entire charge sheet,

(4)

it can be seen that the role attributed to the present applicant is limited to abuse and assault by fists blows and slapped. Now, as regards whether there was common intention in respect of all the accused persons or not, would be decided by the trial Court. For that purpose, when the investigation is complete and charge sheet is filed, the applicant need not be kept behind the bars and he deserves to be released on bail, however, strict conditions are required to be imposed. Hence, following order,

ORDER

i. The Bail Application stands allowed.

ii. The applicant be released on bail in connection with CR No.128/2020, registered with Aundha Nagnath police station, District Hingoli for the offences punishable under Sections 302, 323, 504, 506 read with 34 of IPC. on PR bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

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

iv. The applicant shall not reside and visit village Matha, Tq. Aundha

(5)

Nagnath till conclusion of the trial.

v. Along with submitting the bail papers before the learned Trial Judge, the applicant shall give his complete address of the place of his residence where he intends to reside till end of the trial.

vi. The applicant shall also give the said information to the Investigating officer along with mobile number and shall comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vii. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV