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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 BAIL APPLICATION NO.307 OF 2021

DEVIDAS HARIBHAU KALE
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Karad Murlidhar S
Mr.NT Bhagat, APP for Respondent-State

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 22nd April, 2021.

PER COURT :-

1. Present application has been filed under Section 439 of Cr.P.C. by accused No.2. He has been arrested in connection with CR No.298/2020 by Sangamner Police Station, Tq. Sangamner, District Ahmednagar, for the offences under Sections 302, 307, 120(B), 109, 201, 212, 504, 506 read with 34 of IPC.

2. Heard learned Advocate Mr. Karad for applicant and learned APP Mr.Bhagat, for Respondent-State.

3. It has been submitted on behalf of the applicant that investigation is complete and charge sheet has been filed bearing RCC No.344/2020 before JMFC, Sangamner. The present applicant came to be arrested on 23.6.2020 and he is in MCR since 27.7.2020. It has been further submitted that perusal of the FIR would show that the allegation against the present applicant is, he was present at the spot along with co-accused and stab injuries

were given by co-accused Rahul Kale to father of the informant as well as to the informant by means of knife. The further allegation is that he has instigated main accused Rahul, who had given vital blow. The FIR does not specifically mention role to the present applicant. Post-mortem report gives cause of death of deceased Balasaheb as " Death due to hemorrhagic shock due to stab injury to heart and spleen.". This is attributable to the alleged blow given by Rahul Kale and not to the present applicant. The statements of the witnesses are on the same line. Under such circumstance, further physical custody of the applicant is not required. There was no recovery from him and, therefore, he deserves to be released on bail.

4. Per contra, learned APP strongly opposed the application and submitted that there is ample evidence against the present applicant. Though it is stated in the FIR that the present applicant was present there, further statements of the witnesses would reveal that when Rahul Kale was about to give blow and the informant was about to save his father, at that time, the present applicant instigated Rahul not to spare and finish them. All of them had come with common intention. Recovery of the murder weapon has been done and the post mortem report shows that the deceased had in all three stab injuries. The blow was so severe that there was posteriorly left ventricular wall of the heart got teared and it can be seen that there were clean cut edges. Further, it can be seen from the FIR that there is enmity between the family of

the informant and the accused persons. They are from the same village and, therefore, possibility of tampering with the evidence of the prosecution cannot be ruled out.

5. At the outset, it can be seen that since the charge sheet has been filed, it can be inferred that the investigation is over and further physical custody of the applicant is not required for the purpose of investigation. Now, it is required to be seen as to what evidence has been gathered against the applicant. The allegation as against this applicant is, he has instigated main accused Rahul, who had given vital blow. The informant, who is son of the deceased, is an eye-witness. He himself has stated that in all three persons came at about 7.00 pm on 21.6.2020 and accused Rahul Kale started abusing and threatening the informant. He gave blows of knife on the stomach, back of father of the informant. Then he says that when he tried to intervene, Rahul had assaulted him by means of knife on his arm and back. In the FIR he has not stated that he was stabbed by the present applicant. In his supplementary statement dated 8.7.2020 also, he is not saying so. It appears that he has made that statement in his statement under Section 164 of Cr.P.C. Statement of one Akshay Billade recorded on 23.6.2020 would show that present applicant had instigated Rahul by saying not to spare them. Though we are dealing with prima facie facts; yet it can be seen that the FIR is also lodged on 23.6.2020 and the statement of witness Akshay Billade has also been recorded on

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23.6.2020. As aforesaid, in the supplementary statement recorded on 8.7.2020, the informant is not saying so. Statements of Satish Gadage; Nilesh Kailas Borhade and Kailas Borhade, who have been posed as eye-witnesses, are on the same line of Billade's statement. The weapon has been recovered, which is stated to be produced by witness - Gayatri Harishchandra Dhamale. The recovery at the instance of present applicant is in respect of the clothes. Though death of Balasaheb is definitely homicidal in nature; yet as regards the present applicant is concerned, the aforesaid pieces of evidence have been produced and, therefore, he deserves to be released on bail. Hence, following order, -

ORDER

- i. The Bail Application stands allowed;
- ii. The applicant, who has been arrested in connection with CR No.298/2020 by Sangamner Police Station, Tq. Sangamner, District Ahmednagar, for the offences under Sections 302, 307, 120(B), 109, 201, 212, 504, 506 read with 34 of IPC, he be released on bail on PR of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- iii. The applicant shall not tamper with the evidence of the prosecution in any manner.
- iv. The applicant shall not enter

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the jurisdiction of village Wadgaonpan, Tq. Sangamner, District Ahmednagar till conclusion of the trial. He should reside elsewhere and before submission of bail papers, the applicant should give his complete address of his proposed residence with his mobile number to the Trial Court as well as Investigating Officer. So also he should comply with the requirements under paragraphs No.12(1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

v. Bail before the trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV