

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.330 OF 2021

Bharat Nanasaheb Pardhe @ Saddam
Shaikh = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT/S

Mr.VY Bhide, Advocate for Applicant;
Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 8th April, 2021.

PER COURT :-

1. The applicant has been arrested on 14.9.2019 in connection with CR No.568/2019 registered with Sangamner City police Station, District Ahmednagar, for the offences punishable under Sections 302, 307 and 201 of IPC. He has filed the present application under Section 439 of Cr.P.C.

2. Heard learned Advocate and learned APP appearing for respective parties. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

3. Before turning to the facts of the case, it is to be noted that entire process of collecting the evidence appears to be over and charge sheet

has been filed before the JMFC, Sangamner on 9.12.2019. Under this circumstance, further physical custody of the applicant is not required for the purpose of investigation.

4. Perusal of the FIR would show that it has been lodged by one Shoaib Saleem Khan in respect of death of his uncle Sameer Samsherkhan. It is in respect of incident dated 26.8.2019. But, the FIR has been lodged on 5.9.2019. There appears to be a considerable delay in lodging the FIR. So also, the contents of the FIR would show that the informant had every knowledge about the alleged acts done by the present applicant. The informant says that the present applicant has performed marriage (*Nikah*) with one Muslim lady residing in the same lane, where the informant is residing and present applicant has converted to Muslim at the time of the said marriage. On 26.8.2019, at about 9.00 am, deceased Sameer was brought to the house of the informant by the Manager of a country liquor shop, situated in the Chowk near house of the informant and one Vishal Namdeo Awhad. The informant found that there was an injury to his uncle to the left eye-brow and it was sutured. When the informant asked Vishal Awhad as to what had happened, he told that Sameer had gone to the liquor shop at about 7.00 am for drinking liquor and at that time there was quarrel between Sameer and the present applicant. The present applicant had assaulted him by fists and kicks and by saying that he would kill him. Sameer was thrown on the

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ground forcibly. Sameer sustained injury near his eye. He was taken to Dr.Kute's hospital where the bandage was done. After sutured the wound, it was told that Sameer was not speaking at that time. For a day, he could not move and was sleeping throughout. Therefore, he was taken by the informant and his brother in-law on 27.8.2019 to Government hospital, Ghulewadi. He was then referred to Loni Pravara hospital. He was taken in an ambulance there. But since an ICU room was not available, it was told that Sameer should be shifted to another hospital. The informant says that since they are poor and unable to raise the funds to meet the expenses of hospitalization, they brought him back to the house. The informant had seen the CCTV footage of the liquor shop, wherein he found that the applicant had assaulted and thrown Sameer on the ground. On the next day, i.e. on 28.8.2019, he contacted the applicant and told that due to his assault, his uncle is serious. The present applicant represented him that he would bear the hospital charges, but no complaint should be lodged. This proposal was accepted by the informant as he had intention that his uncle should get cured. The present applicant gave an amount of Rs.10,000/- to the informant on 30.8.2019 and on the next day, along with the applicant it is stated that the injured Sameer, the informant and his friend took Sameer to SMBT hospital at Dhamangaon Ghoti. It is stated that the present applicant went for registration of the patient and thereafter Sameer was admitted. He was regaining his

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consciousness intermittently and he used to say that he has been assaulted by the applicant. On 3.9.2019, it was told by the doctor that due to the assault, there were clots of the blood in the brain of the deceased. The doctor further told that he is serious and he should be shifted to JJ hospital at Mumbai or should be taken back at home. But in the meantime, the applicant had ran away from the hospital. Therefore, they brought Sameer to the house on 4.9.2019 and then lodged the report. It can be seen that when the report was lodged, it was under Section 307 of IPC. But appears that thereafter Sameer expired on 30.9.2019.

4. An important point to be noted is that when the FIR was lodged on 5.9.2019 and the deceased expired on 30.9.2019, why the Investigating Officer has not recorded his statement or even tried to record it at any point of time, is a mystery. Sameer appears to have been at home from 4.9.2019 to 30.9.2019. The post mortem report gives probable cause of death as head injury with its complications. Column No.17, indicates three injuries, as follows, -

a) Therapeutic tracheotomy wound of diameter 02 cms present over neck in mid line;

b) Injection mark, present over lower third of left forearm, anteriorly therapeutic;

c) Injection mark present over right hand dorsum, therapeutic, associated with swelling and oedematous

5. Column No. 19 says that there was injury under scalp on reflection and hematoma was present at right temporal region, involving right temporal is muscle and corresponding fascia of size 10 cm X 05 cm. The results of the examination of brain have also been given.

6. Learned APP has strongly stated that there is evidence in the form of CCTV footage from the liquor shop, showing that the present applicant had thrown Sameer forcibly on the ground in the said scuffle. Further, there were eye-witnesses, who were present in the liquor shop at the relevant time. Though this evidence appear to be there, the question, that arises is, whether the applicant was also under the influence of liquor and Sameer was also under the influence of liquor ? If they were under the influence of liquor, then as regards the present applicant is concerned, whether he had intention to kill Sameer. Another fact is to be noted is that if Sameer would have been given immediate and timely medical assistance, then his life would have been saved or not. As per the statement of the eye-witness and even it is reflected in the FIR that said Vishal Awhad and the Manager had taken Sameer to the hospital and it appears that only sutured of the wound and bandage was done. Therefore, even at this stage, there are doubts as to whether the case would fall under Section 302 of IPC or not. With the delay that has been caused in lodging the FIR as well as for giving the treatment to the uncle by the informant,

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it leads this Court to exercise the discretionary powers. Though charge sheet is filed, it would take long time for the trial to stand and, therefore, the applicant need not be asked to linger in jail. Hence following order, -

ORDER

i. The Bail Application stands allowed.

ii. The applicant be released on bail in connection with CR No.568/2019 registered with Sangamner City police Station, District Ahmednagar, for the offences punishable under Sections 302, 307 and 201 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 comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vi. Bail before the trial court.

(SMT. VIBHA KANKANWADI)
JUDGE