

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.360 OF 2021

CHANDRASHEKHAR @ CHANDRAPRAKASH S/O SADASHIV KENDRE
VERSUS
THE STATE OF MAHARASHTRA

.....
Mr. S. S. Thombre, Advocate for the - applicant.
Mr. A. M. Phule, APP for the respondent – State.
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06-05-2021

ORDER :-

1. Present applicant has been arrested by Yusuf Wadgaon Police Station, Dist. Beed in connection with Crime No.150 of 2020 for the offences punishable under Sections 302, 341, 323, 504, 506 read with 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. S. S. Thombre for the applicant and learned APP Mr. A. M. Phule for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that the allegations are against the present applicant and the other accused persons. The FIR shows presence of the present applicant along with other accused persons,

however, role attributed to the present applicant is assault by whip. Further, it states that the said incident had taken place at about 3.00 p.m. on 17.07.2020 and the accused persons as well as present applicant left the place. Informant, who is the wife of deceased Babasaheb, states that thereafter Babasaheb became frightened and told the informant that he would go to the place of his sister at Tokwadi, as he has fear from the accused persons. He left the house at about 3.00 to 3.30 p.m.. Thereafter, the informant had contacted him on phone at about 7.38 p.m., whereupon Babasaheb told that he is near field of one Subhash Uttam Lad on Ambejogai road and he is alone. He also told that the accused persons are near him. The phone was then cut off. Informant then sent her brother to see where deceased Babasaheb is. Her brother returned at about 9.00 p.m. and told that he could find the motorcycle of Babasaheb, but he could not find Babasaheb and the accused persons, who are from Kendrewadi. Around 8.11 a.m., on 18.07.2020, the informant received phone call of the brother-in-law of Babasaheb stating that Babasaheb has been murdered and his body has been thrown in the field of one Arjun Ghanshyam Lad. Informant went there and found the dead body of her husband in nude condition. He had sustained injuries. Then she says that present applicant along with other accused persons had committed murder of her husband and by saying so, she has lodged

the report. The learned Advocate for the applicant further submitted that now, the investigation is over and charge-sheet is filed. There is discovery of the murder weapon at the behest of present applicant, so also there is discovery of plastic pipe and wooden stick from accused - Prashant. There is no eye witness to the incident and all the witnesses as well as the informant want to rely on the alleged incident that had taken place earlier day when the applicant and other accused persons are stated to have abused and assaulted deceased. There is no direct evidence about the incident that had allegedly taken place in the intervening night of 17.07.2020 and 18.07.2020. Statements of the witnesses taken under Section 164 of the Code of Criminal Procedure is also on the point of the incident that had taken place at about 3.00 p.m. on 17.07.2020. The prosecution intends to say that there was illicit relation between Babasaheb and wife of accused No.1 – Nitin and, therefore, all the accused persons got annoyed with Babasaheb and that was the reason for which Babasaheb is stated to have been eliminated. However, there is no direct evidence to support the impression that was carried out. The learned Advocate for the applicant, therefore, prayed for bail as it would take long time for the concerned Court to decide the matter. Further, he submits that all the co-accused in the present crime have been released on bail by this Court and therefore, on the ground of

parity also, present applicant be released on bail.

4. Learned APP strongly opposed the application and submitted that though there is no direct evidence, yet, the circumstances and the chain of events definitely indicate that the present applicant and other accused persons are the authors of the crime. They had gone to the house of Babasaheb at about 3.00 p.m. on 17.07.2020. Present applicant had assaulted Suresh with whip and when Suresh asked as to why he is being assaulted, at that time, present applicant told that his brother Babasaheb has done the act, which has caused domestic problems (तुझा भाऊ बाबासाहेब याने आमचे घर मोडले आहे). Present applicant and other accused persons were present there and they also told Suresh that he should produce Babasaheb at that moment because of the bad acts done by him. All of them had abused the family members and left. At the time of leaving, the present applicant had told Suresh that they should bring Babasaheb before them, otherwise they would cause ill act with the female members of the family. Thereafter, this fact was told by the informant to her husband Babasaheb and then he felt that there is danger from these accused persons to his life and, therefore, he told that he would go to the place of his sister at Tokwadi. This incident was sufficient to have nexus of the present applicant and other accused persons with the crime. The second part is that when the informant had

given a phone call to her husband at about 7.38 p.m., Babasaheb had told her location where he was i.e. near the field of Subhash Uttam Lad and then he had also told that the present applicant along with other accused persons are along with him. The statements of witnesses are on the same point. Further, statement of witness – Sunil Dapkar would show that when he was proceeding at about 6.00 p.m. on his motorcycle towards Khadi Kendra on 17.07.2020, he found present applicant along with other accused persons and one Babu Kekan as well as Shrihari Kekan holding wooden sticks, wooden log and plastic pipe. There are witnesses who have stated that they had tried to resolve the dispute between Babasaheb and accused No.1 – Nitin. Statements of witnesses taken under Section 164 of the Code of Criminal Procedure are on the same line. There is discovery of the weapons at the instance of present applicant as well as Prashant. The postmortem report shows that the death was homicidal in nature and, therefore, when only the applicant had the motive to commit murder of Babasaheb, his bail application deserves to be rejected.

5. At the outset, the investigation is over and charge-sheet is filed i.e. Regular Criminal Case No.78 of 2020. The evidence that is collected against the present applicant is required to be considered. The story is already narrated and, therefore, it need not be repeated. From the

perusal of the charge-sheet, it can be seen that the case is based on circumstantial evidence. No doubt, the inquest panchanama, postmortem report and other documents definitely show that the death of Babasaheb was homicidal in nature, it is then required to be seen as to whether *prima facie* facts and evidence show that the present applicant is the possible author of the crime. Except the statements, which appear to be hearsay, there is no evidence regarding the alleged illicit relationship. The allegations are to the extent of talking on phone by Babasaheb to a lady. None of them appears to have been seen them together at any point of time. Now, it would be the task of the prosecution to prove that, that was the motive behind the crime. As regards the incident that had taken place at about 3.00 p.m., the role attributed to the present applicant is restricted to assault by whip. The memorandum panchanama after the discovery by present applicant would show that he has discovered one Bambustick, wooden stick and wooden plank. Accused – Prashant has discovered one plastic pipe and one wooden handle. At this stage, there is no corresponding evidence in the form of either matching blood stains of the deceased on these weapons and, therefore, whether independently that can be said to be the murder weapon will have to be proved by the prosecution at the time of trial. The cause of death is death due to hemorrhagic shock due

to multiple contusions over the body. As aforesaid, the death is homicidal in nature. Statements of witnesses are on the same line, but taking into consideration the fact that is disclosed in the FIR, that the informant had given phone call to Babasaheb at about 7.38 p.m., and it was picked up by Babasaheb, he told his location and also the fact that the present applicant along with other accused persons are along with him, is not corroborated by piece of CDR of her mobile phone or mobile phone of the deceased. There appears to be much distance between Lade Wadgaon, taluka Kaij, district Beed and Tokwadi, which comes in taluka Parali, district Beed. But then it is to be noted that as per the informant, Babasaheb had left his house around 3.00 to 3.30 p.m. and till 7.30 p.m., he had not reached to Tokwadi. The disclosure by him that he is along with other accused persons at that time is surprising at this stage, as the informant has stated that due to the fear from the accused persons, he was going to Tokwadi, yet, how he could be with the same persons, is a question. Therefore, taking into consideration the evidence that is collected and the fact that it would take long time to stand the trial, the applicant deserves to be released on bail. So also, all the co-accused in the present crime have been released on bail by this Court and therefore, on the ground of parity also, present applicant deserves to be released on bail. Hence, the following order :-

ORDER

- 1) Bail Application stands allowed.
- 2) Applicant – Chandrashekhar @ Chandraprakash s/o Sadashiv Kendre, who has been arrested in connection with Crime No.150 of 2020, registered with Yusuf Wadgaon Police Station, district Beed, for the offences punishable under Sections 302, 341, 323, 504, 506 read with 34 of Indian Penal Code, be released on P. R. Bond of Rs.50,000/- (Fifty Thousand) with two solvent sureties of Rs.25,000/- (Twenty Five Thousand) each.
- 3) He shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not indulge in any criminal activity.
- 5) It is clarified that the observations made are restricted for deciding the bail application only and the Trial Court shall not get influenced by any observations.
- 6) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]