

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.395 OF 2021

NARAYAN ZENDYA CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

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Mr. S.R. Sapkal, Advocate for the applicant

Mr. S.B. Narwade, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th APRIL, 2021.

ORDER :

1 Present applicant is the original accused No.1, who came to be arrested on 28.02.2021 in connection with Crime No.5939/2020 registered with Kotwali Police Station, Dist. Ahmednagar, for the offence punishable under Section 302, 143, 147, 148, 149, 188 of the Indian Penal Code, 1860. He has filed present application under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. S.R. Sapkal for the applicant and learned APP Mr. S.B. Narwade for the respondent. In order to cut short it can be said that they have argued in support of their respective contentions.

3 Perusal of the First Information Report would show that it is lodged by one Tai Suresh Kale, who is the sister of deceased Vicky Dholya Chavan. She has stated that her parents and brothers were residing at Dudhsagar Society, Kedgaon. On 02.09.2020 at about 02.00 p.m. when she had gone to Sonewadi Phata, Kedgaon, she found her younger brother Vicky Dholya Chavan had sustained injuries to his forehead and face as well as back side of the head. He was unconscious. She states that she was making inquiry, as to whether who had assaulted her brother, in the meantime, her brother regained conscious. He went by walk to house along with the informant. He disclosed that around 01.00 p.m. present applicant, who is their relative, had taken the box containing statues of their family deity, and therefore, he had gone to demand that box, but he was assaulted by the applicant and other seven persons with fists and kick blows as well as bricks and stones. It is then stated in the FIR that her brother was admitted at night time with Bhagirathi Accident Hospital, Ahmednagar. He was then discharged on 03.09.2020 in the morning. Thereafter, he was again admitted to Vighnaharta Super Speciality Hospital, Ahmednagar on 07.09.2020, where he was admitted till 11.09.2020. He was discharged but he was not feeling well, therefore, he was taken to Chede Accident and Surgical Hospital, Tarakpur and admitted there. He was discharged on 13.09.2020. When he was brought to house he succumbed, and therefore, she lodged the report.

4 Interesting point to be noted is that thereafter it appears that she has given a supplementary statement stating that her brother was admitted to Bhagirathi Hospital on 06.09.2020. Statement of the other family members i.e. brothers, mother, sister-in-law of deceased Vicky, who are residing in the neighbouring house, that Vicky was admitted to Bhagirathi Hospital on 06.09.2020. The medical papers, those have been produced on record, are of his admission from 06.09.2020. With the help of learned APP perusal of the FIR showed that there is absolutely no evidence collected as to whether deceased Vicky was admitted to any hospital from 02.09.2020 till 06.09.2020. There is no such record. So also, the statements of those witnesses are not giving any kind of clue, whether Vicky was tried to be taken to any hospital, if he had sustained such a serious injury on 02.09.2020 around 01.00 p.m. If we considered the Medico Legal Certificate, which is issued by Bhagirathi Accident Hospital, Ahmednagar, it shows that the concerned hospital had examined the deceased on 06.09.2020. History of assault is given, however, no date is given and age of the injury is simply said as 'old' and the nature of the injury is said to be 'simple' and the type of injury said to be 'facial jaw injury', in which facial bone zygoma had fracture on left side. Statement of the treating doctor there Dr. Abhishek Mukesh Mule would disclose that he had examined deceased Vicky only on 06.09.2020 and not prior to that. It was told to him that Vicky was assaulted

by unknown persons about 9 to 10 days earlier. When the date of incident as per the FIR is 02.09.2020, then this history does not match, which the treating doctor had extracted from the relatives of the deceased. His hospital papers also say the same thing. Thereafter it appears that he was taken to Vighnahartha Super Speciality Hospital. Statement of the treating doctor from that hospital has been recorded, who is Dr. Akhil Sheshrao Dhanorkar. It is stated that he had examined Vicky on 07.09.2020 at about 7.45 p.m. The history that was given to him was assault about 5-6 days earlier. He was then taken to Chede Accident and Surgical Hospital. There is no history as such taken. But it appears that he was admitted with that hospital on 12.09.2020. Thus, from any angle if the medical papers are considered, it does not reflect that any such incident would have taken place on 02.09.2020. Now, statements of some witnesses have been taken, who have been posed as eye witnesses. But they say that some scuffle has taken place between the persons from Pardhi community and nobody had intervened in that. The question is left that when the incident had taken place on 02.09.2020 and the informant and the family members had come to know that such incident has taken place and they came to know also the name of the assailants, why they had not gone to police and tried to lodge any report ? The report was lodged only after the death of Vicky. Therefore, admittedly, there is delay in lodging the report. The Postmortem report

would show that deceased had sustained about 9 surface injuries and then the probable cause of death was not given at that time. Viscera was preserved for chemical and histo pathological analysis. The final cause of death has been given on 28.01.2021 as “*Postmortem and Pathological report is suggestive of death due to Bilateral Upper lobe pulmonary Edema with Bilateral Lower lobe pulmonary Consolidation and pulmonary haemorrhage*”. Thus, taking into consideration the fact that in the Medical Legal Certificate issued by Bhagirathi Accident Hospital there was only one injury, whereas Medical Legal Certificate issued by Vighnaharta Super Speciality Hospital there are five injuries and Chede Accident and Surgical Hospital is giving some more injuries and ultimately Postmortem Report is giving different number of injuries; prosecution will have to prove that there was an intention on the part of the person assaulting deceased that he had intention of commit murder. Further, the prosecution will have to rule out the possibility of accidental death, taking into consideration the medico legal reports of Chede Hospital making a mention about addiction of the deceased to the liquor.

5 With this kind of evidence the applicant need not be kept behind bars, as it would take long time to stand his trial. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Narayan Zendya Chavan, who has been arrested in connection with Crime No.5939/2020 registered with Kotwali Police Station, Dist. Ahmednagar, for the offence punishable under Section 302, 143, 147, 148, 149, 188 of the Indian Penal Code, 1860, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 The applicant shall not tamper with the evidence of the prosecution, in any manner.

4 He shall not indulge in any criminal activity.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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