

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

914 BAIL APPLICATION NO.547 OF 2021

. Shyam S/o. Ramesh Kendre
Age: 25 years, Occu.: Labour,
R/o. Kekat Sindgi, Tq.Jalkot,
Dist.Latur.

..Applicant
(Ori. Accused)

VERSUS

1. State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.

2. The Superintendent of Police,
Nanded, Dist.Nanded,
Through Mukhed Police Staiton,
Mukhed, Dist.Nanded.

..Respondents

Advocate for Applicant : Shri Nitin S. Kadarale
APP for Respondent : Smt.D.S.Jape

CORAM : M.G.SEWLIKAR, J.

DATE: 3rd September, 2021

PER COURT:-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail.

2. The deceased Narayan Pawar was the son of the informant Ankush Pandharinath Pawar. At 04:00 p.m. on 18th December, 2020, the deceased and the applicant had gone to the field and they came back in the evening. Both of them had left for Jambh.

At 10:45 p.m., one Ramkishan Yelewad informed the informant telephonically that deceased Narayan was found on the road near Tiranga Dhaba in injured condition. When the informant and his nephew Maruti Govind Dalve went to the spot, they found the deceased Narayan having injuries on his buttocks, anus and other parts of the body. The deceased was not in a position to speak. He was only saying that he had altercation with the applicant and owner of Tiranga Dhaba by the name of Balaji Devake. Thereafter, he fell unconscious and did not regain consciousness. He passed away on 23rd December, 2020 at 01:30 a.m. On these allegations, Crime No.402 of 2020 came to be registered on 23rd December, 2020 with Mukhed Police Station, District Nanded, under Section 302 read with Section 34 of the Indian Penal Code.

3. Heard Shri N.S.Kadarale, learned counsel for the applicant and Smt.D.S.Jape, learned APP for the respondent-State.

4. Shri Kadarale, learned counsel for the applicant submitted that the incident took place on 18th December, 2020 but the report was not immediately lodged and it was lodged on 23rd December, 2020 for which no explanation is forthcoming. He submitted that the statements of the eye-witnesses go to show

that the deceased had parted the company of the applicant on 18th December, 2020 at 09:00 p.m. Therefore, there was no question of the applicant having any quarrel with the deceased. He submits that the applicant has no criminal antecedents. He is not likely to commit any offence of similar nature.

5. Smt.Jape, learned APP for the respondent-State submitted that the deceased had made a statement soon before death that there was altercation between him and the applicant and Balaji Devake, the owner of Tiranga Dhaba. She submitted that this statement is in the nature of dying declaration, which indicates the circumstances which resulted into the death of the deceased. She further submitted that iron rod and knife were recovered from Balaji Devake and the applicant respectively. She submitted that the statements of the witnesses show that the applicant was dropped at the Sindagi village at about 09:00 p.m. She submitted that the deceased had 12 injuries as per the post mortem report. The statements of the witnesses show that the applicant had come back to village Sindagi at about 09:00 p.m. Therefore, there is sufficient evidence to connect the applicant with the offence.

6. On perusal of the charge-sheet, it is seen that the witness

Ramkishan Yelewad stated that when he reached the spot he found the deceased lying there with injuries on his person. He states that the injuries were on his buttock and anus. Witness Sambhaji Yelewad states that there was some altercation between Balaji Devake and the deceased. The deceased had pelted onion on the face of the applicant. Thereafter, the applicant went away with witness Sambhaji Yelewad. They dropped applicant at 09:00 p.m. at village Sindagi. Same is the statement of Ganpat Yelewad and Ramkishan Yerpurwad. At the instance of the applicant, knife was recovered. The knife does not have blood stains. The deceased died five days after the incident. Cause of death is shown to be 'Septecemia in operated case and blunt trauma to abdomen'. It does not say that cause of death is because of multiple injuries.

7. Applicant does not have criminal antecedents. He is not likely to commit similar offence again and will be available for trial as he has permanent residence at village Kekat Sindgi and since charge-sheet is filed, there is no question of tampering with the evidence. Having regard to this and considering the nature of evidence collected by the prosecution, case for bail is made out. Hence, the order.

ORDER

- i) Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs. Twenty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.402 of 2020, registered with Mukhed Police Station, Dist.Nanded, under Section 302 read with Section 34 of the Indian Penal Code.
- iii) Application is disposed of.

(M.G.SEWLIKAR)
JUDGE

SPT