

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.994 OF 2020

SANTOSH KESHAV DALVI

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.V. Gaware, Advocate for the applicant

Mr. N.T. Bhagat, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 06th MAY, 2021

PRONOUNCED ON : 08th JUNE, 2021.

ORDER :

1 Present applicant has been arrested on 09.01.2020 by Supa Police Station, Dist. Ahmednagar, in connection with Crime No.3/2020, for the offence punishable under Section 302 read with Section 34 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. N.V. Gaware for the applicant and learned APP Mr. N.T. Bhagat 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 informant Alka Balu Shinde is the mother of deceased Sachin. Sachin Used to do some work with Setu office in Parner Tahsil Office. Present applicant Santosh Keshav Dalvi, co-accused Krishna Ashok Shinde and one Babdya Bankar were his friends. Informant was knowing the friends of her son, so also, their addiction to liquor. She states that Sachin's friends used to call Sachin for drinking liquor and after the consumption they used to leave him at home. In spite of giving advice by the mother, Sachin had not given up the addiction and it is her firm belief that because of those friends her son has addicted to bad vices. Sachin also used to say that there used to be quarrels between him and his friends. Sachin went out of the house at about 2.00 p.m. on 07.01.2020 after he had received somebody's call. He did not return till 9.00 p.m. and, therefore, mother went to search him. She went to one Sagar Nagare, who is a hotel owner of Parner road. After making inquiry with him about Sachin, he told that present applicant has taken Sachin on his motorcycle towards Supa. It was also told that Krishna Shinde was also along with them. Mother believed that those friends would leave Sachin at home and, therefore, she went home. Sachin did not return at night time. In the morning she tried to contact son on mobile, however, it was off. She

made inquiry with relatives and came to know from one Machchhindra Kisan Nawle that Sachin is lying in injured condition in one agricultural land called 'Morai', in the jurisdiction of village Hanga, on Supa-Parner road. Mother went to the said place with her son-in-law and others. She found that Sachin had received head injury and he was not speaking. Police Station was informed and then Sachin was shifted to hospital in ambulance, however, he was declared dead, after taking to hospital. She, therefore, lodged report against the present applicant and co-accused Krishna Shinde stating that for some unknown reasons they have committed Sachin's murder.

4 After perusal of the said FIR it can be seen that the reason for the murder was not even clear to the mother. She could gather information from others that deceased Sachin was with the present applicant and co-accused. Perusal of the Postmortem Report would show that in column No.17 the Medical Officer has noted in all 15 injuries. The internal injuries to the head have also been noted in column No.19. The probable cause of death has been given as, "head injury due to trauma to/over head with hard and blunt object". A note has been put by the Medical Officer stating that age of the injuries is within 24 hours from the time of examination. The postmortem had begun at 4.25 p.m. on 08.01.2020. It is also stated in the note that the injuries noted are not possible by fall or accident. Therefore, prima facie it

appears that the death is homicidal. But then whether the authors of the crime are whether the present applicant and co-accused, is a question. Statements of witnesses have been recorded under Section 161 of the Code of Criminal Procedure. Witness Sagar Nagare says that he had met Sachin and the present applicant around 2.45 p.m. on 07.01.2020. Present applicant had disclosed to him that he along with Sachin and Krishna Shinde would be going out. Witness Sachin Londhe, who was along with witness Sagar and he is also saying the same thing. Therefore, at the most their statement discloses that deceased was seen with present applicant around 2.45 p.m. Thereafter, statement of one Sandip Bankar has been recorded, who states that he had received phone call of the present applicant around 3.15 p.m., but he had not picked it up. After he noticed around 4.15 p.m., he called present applicant, who then disclosed that he along with Sachin were consuming liquor by sitting on a lonely place (plateau). Sandip went to that place around 4.30 p.m. He found Sachin and Santosh were consuming liquor. He also started consuming liquor with them. Thereafter about 5.00 p.m. Krishna arrived and they all consumed liquor. Around 5.30 p.m. all of them started to go to home. When present applicant was starting his motorcycle he asked Krishna that he might have got his salary on that day and, therefore, he should spent. In the meantime, the witness went from that place and then he saw that present applicant, Krishna and Sachin were still

drinking liquor.

5 At the outset, even at this prima facie stage the said statement appears to have contradictions. At one place he says that around 5.30 p.m. he started to go to home and at that time all of them were about to leave for home and then at that time the present applicant took out the key from the motorcycle of co-accused Krishna and then asked about his salary and demanded that he should spent. He does not say that what Krishna told to present applicant and whether they had asked present applicant to stay more with them. Even if we take his statement as it is, it would reveal that he had seen the deceased in the company of present applicant and co-accused around 5.30 p.m. Further, the CCTV footage of purchase of the liquor by deceased appears to have been collected through CCTV footage from the shop. If the chronology is put then it would be Sandip, who had seen all of them together lastly. Though Postmortem Report says the injuries were within 24 hours, it is not giving the exact time of death. The discovery from the present applicant is in respect of his clothes. It appears that prosecution intends to say that the murder weapon is a stone and while describing it it is stated that it weighs only 1 k.g. The contradiction, that can be considered and even at this stage, it can be said that it is the negligence of the Investigating Officer to consider, as to whether by such stone weighing 1 k.g.

only, whether 15 surface injuries also having corresponding internal injuries would be caused. It appears that there is no investigation further. The charge sheet does not reflect that the said weapon was ever sent to the Medical Officer for its examination and his opinion as to whether such injuries are possible. While describing it, at one place it is stated that it is seized from the spot and in another column it is stated that from the spot it is seized from the custody of accused No.1. This clearly indicates the sheer negligence on the part of the Investigating Officer. As the charge sheet is filed, the further physical custody of the applicant is not required for the purpose of investigation and with such kind of evidence he need not be asked to linger in jail. Hence, the application deserves to be allowed. Accordingly, it is allowed.

ORDER

1 Application stands allowed.

2 Applicant Santosh Keshav Dalvi, who has been arrested by Supa Police Station, Dist. Ahmednagar, in connection with Crime No.3/2020, for the offence punishable under Section 302 read with Section 34 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 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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