

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 917 OF 2021

Kashinath S/o Pandharinath Choure

Applicant

Versus

State of Maharashtra

Respondent

Mrs. R.S. Kulkarni, Advocate holding for Mr. S.S. Kulkarni for the applicant.

Mr. A.A. Jagatkar, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 22nd September, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 0046/2021 registered with Basmat City Police Station, Dist. Hingoli, for the offences punishable under Section 302 of the Indian Penal Code.

2. Facts leading to this application are that informant is the Director of Little English School, Basmat, Dist. Hingoli. It is alleged in the First Information Report that the applicant is working as a

Security Guard in the said school. Deceased was the father-in-law of the applicant. The deceased was a physically challenged person. He used to use a three wheeler bearing No. GJ-06-IC-0010 specially designed for physically challenged persons. On the day of the incident, i.e. on 1st February, 2021, at 11.30 am, the deceased came to the school. After parking the vehicle, he crawled to the room of the applicant. It will not be out of place to mention here that the school had provided a room to the applicant being a Security Guard.

3. It is further alleged in the First Information Report that the informant heard hot verbal exchanges from the room. A little while later, the applicant came out screaming that at last he had done away with the deceased. Informant caught hold of him and he was handed over to the employees of the school by the name of Govind Dalvi and Kiran Gawande. When the informant entered the room, he noticed that the deceased was lying in a pool of blood. Brain matter had come out and a wooden log was lying in broken condition. Informant realised that the applicant had killed the deceased. Thereafter, he lodged the report in the police station. This report was lodged on 1st February, 2021 at 3.51 pm on the basis of

which, offence under Section 302 of the Indian Penal Code came to be registered.

4. Heard Smt. Kulkarni, learned counsel for the applicant and Shri Jagatkar, learned APP for the State.

5. Learned counsel for the applicant submits that except the statement made in the First Information Report, there is no evidence to show that at the time of the incident the applicant was in the school. She submits that the First Information Report shows that the informant was nabbed then and there only at about 1.43 pm. But the General Diary does not show that he was produced at 1.43 pm. Arrest panchanama shows that he was arrested at 7.37 pm. She submits that there is no evidence to show as to where the applicant was during this period. She submits that this is a serious lacuna in the prosecution case. She further submits that Column No. 18 of the Post Mortem report shows that the deceased had dissection of both thigh regions, the fractures are displaced, the fractured bony margins are blood infiltrated and collection of hematoma around both fractured femurs. She submits that this observation in Post Mortem report indicates that the deceased

himself must have had a fall due to which he sustained those injuries. She further submits that there are discrepancies in the statements of witnesses. Witness Bhagyashri – wife of the applicant, was in the house at the time of the incident. She has a different story to narrate. She further submits that the statements of the brother and mother of Bhagyashri are also discrepant with each other. She further submits that sale-deed was to be executed and for that purpose the deceased, brother and mother of Bhagyashri had come to Basmat. Wife of the deceased by name Geetabai has stated that if her husband asked for her, her son-in-law i.e. the applicant should not tell her husband about her (Geetabai's) presence. She submits that all this evidence creates suspicion about the veracity of the prosecution case. She further submits that the police received the information via telephone. In the statement of the police officer who received the telephone call, he has stated that he received the information about the incident telephonically. But none of the witnesses say that any telephone call was made to the police station. She further submits that there is nothing on record to show that the applicant was employed as a Security Guard in the school. All these circumstances create doubt about the authenticity of the prosecution case. Learned counsel Smt. Kulkarni has pointed out that the order

passed by the learned Additional Sessions Judge, Basmat shows complete non-application of mind. She submits that the entire order is a copy-paste of the earlier order passed before the filing of the charge-sheet. She submits that the applicant does not have criminal antecedents. This is his first offence. She, therefore, submits that having regard to the suspicious circumstances, the applicant deserves to be released on bail.

6. Learned APP opposed the application.

7. First Information Report shows that at the time of the incident, the applicant was in his room. The deceased, who was paraplegic from lower limbs, parked his vehicle and crawled to the room of the applicant. Thereafter, the informant heard hot exchange of words and thereafter, the applicant was seen coming out of the room screaming that he finished his father-in-law.

8. Spot Panchanama shows that it was drawn on 1st February, 2021 between 1.50 pm and 2.30 pm. It shows that the deceased was lying in a pool of blood. His skull was split and brain matter had come out. There was a wooden log colloquially called as

“*musal*” and it was broken in two pieces. It further shows that the blood had spilled all over the room.

9. From the evidence collected by the prosecution, it can be seen prima facie that the applicant was allotted a room in the school. Dead body of the deceased was lying in the room. From the appearance of the dead body one can easily make out that it was a homicidal death. Post Mortem report also shows that the death was due to head injury. Presence of the applicant is corroborated by the statement of his wife Bhagyashri. She stated that her father had come to the room allotted to her husband (applicant) by the school. She states that her husband and she used to stay in that room. She further stated that after arrival of her father she had gone to the school for preparation of tea for the employees of the school. Her statement further shows that she heard hot exchange of words from her room. Therefore, she left for the room and at that time, she saw the applicant (her husband) coming out of the room in frightened state. When she asked her husband, he told that the deceased had alleged that the applicant and the wife of the deceased had illicit relations on account of which, he delivered a blow of *musal* on the head of the deceased. Similar is the statement of Geetabai and her

son Shivdas. This statement of Bhagyashri clearly shows that a room has been allotted to the applicant and that the applicant had assaulted the deceased by means of a *musal* as the deceased had alleged that the applicant had illicit relations with the wife of the deceased. All these circumstances clearly indicate that there is prima facie case against the accused/applicant. The infirmities which learned counsel for the applicant tried to point out are not so serious as to go to the root of the matter. Having regard to the totality of the circumstances, this is not a case in which discretion can be exercised in favour of the applicant.

10. This Court, with the assistance of learned counsel Smt. Kulkarni, compared the order passed by the learned Trial Court before filing of the charge-sheet dated 20th February, 2021, and the order passed after filing of the charge-sheet dated 27th May, 2021. I find substance in the submission of learned counsel for the applicant. It is virtually a copy-paste order except the words “that this application has been filed post charge-sheet”. This approach of the learned Trial Court, to say the least, is not correct. Therefore, there is substance in the argument of the learned counsel that the order suffers from complete non-application of mind. Be that as it

may, this Court considered the application on its own merits and has found no substance in it. Hence the following order :-

ORDER

- i) Application is rejected.
- ii) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.
- iii) Registry to bring these observations to the notice of Principal District Judge, Hingoli and the Principal District Judge shall bring it to the notice of the concerned Judge.

(M. G. SEWLIKAR)
Judge