

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

7 BAIL APPLICATION NO.1275 OF 2020

KANIFNATH MANIK MAVAS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent : Mr. S P Deshmukh

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CORAM : V.K. JADHAV, J.
Dated: January 04, 2021

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PER COURT :-

1. The applicant is seeking regular bail in connection with crime No.I-28 of 2020 registered with Newasa police station, District Ahmednagar for the offences punishable under Sections 302, 201, 177, 120-B read with Section 34 of IPC. His application bearing Bail Petition No.214 of 2020 with similar prayer came to be rejected by the learned Additional Sessions Judge, Newasa-Ahmednagar vide order dated 04.07.2020.

2. Learned counsel for the applicant submits that investigation is over and charge-sheet has been submitted. The applicant is in jail in connection with the present crime since 14.1.2020. Learned counsel

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submits that though initially crime was registered against the applicant and co-accused Ashok Tupe, however, during investigation, involvement of three more accused persons revealed. Learned counsel submits that, however, charge-sheet came to be filed against this applicant and co-accused Shubham Pawar and the investigating officer has submitted the report under section 169 of Cr.P.C. against other three accused persons.

3. Learned counsel submits that prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. On the same set of allegations, co-accused Shubham came to be released on bail by this Court by order dated 7.8.2020 in bail application no.757 of 2020. Learned counsel submits that on the basis of the complaint lodged by father of the deceased, crime has been registered. After intimation was given to the father by the police about dead body on 13.1.2020 informant/father has lodged the complaint expressing his suspicion against the

applicant and one accused Ashok Tupe. Learned counsel submits that even till 13.1.2020 informant/father of the deceased has not lodged missing report. It is not clear from the investigation papers as to when the deceased Kiran was found missing from the village. Learned counsel submits that there is some evidence about the deceased lastly seen in the company of the applicant on 6.1.2020. However, in the postmortem report, there is no remark about the probable time of death. Learned counsel submits that even said evidence pertaining to the last seen together is also scanty. Learned counsel submits that though at the instance of this applicant certain articles including weapon and cloths shown to have been recovered by drawing panchnama under section 27 of the Evidence Act, however, there are no blood stains on any of the articles. Learned counsel submits that the applicant allegedly shown spot of the incident and blood shown to have been collected from the said spot, however, no CA report is filed along with charge-sheet pertaining to the said sample of blood. Learned counsel submits that

even motive is also weak. There are allegations that deceased was protesting the selling of illicit liquor in the residential area of the backward class persons, however, it has been revealed during the investigation that deceased had consumed country liquor along with the applicant. On the other hand, it also appears that deceased and applicant were friends. Thus, there is no motive on the part of the applicant to commit the murder of the deceased. Even though there are allegations that the present applicant got annoyed because of the complaint lodged by Kiran. The applicant and co-accused Ashok Tupe came to be arrested by the police in connection with the crime under the Maharashtra Prohibition Act, however, even said record of the criminal case is also not annexed to the charge sheet. There is no criminal history. The applicant is ready to furnish surety. The applicant is also ready to abide the conditions, if imposed by this court while enlarging him on bail. Learned counsel further submits that as per the postmortem report, probable cause of death is stab injury. In column no.17 description of the

stab injuries are mentioned, where margins are mentioned as clean cut however, weapon iron rod shown to have been recovered at the instance of the applicant and no any sharp weapon recovered at his instance. The applicant may be released on bail.

3. Learned A.P.P. has strongly resisted the application on the ground that though there is no direct evidence in this case, however, there is a chain of circumstantial evidence against the applicant. Deceased got annoyed because of the complaint lodged by the deceased Kiran and on the basis of the said complaint, the applicant came to be arrested in connection with the said crime. Learned APP submits that deceased was lastly seen alive in the company of the applicant and there are witnesses on the said last seen circumstance. Even, at the instance of the applicant, weapons allegedly used in the assault came to be recovered. Prima facie, there is evidence about homicidal death of the deceased. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the investigation papers, it appears that prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. Informant/father of the deceased though lodged complaint on 13.1.2020, however, there is no mention in the complaint as to when deceased was found missing from the village. Informant has lodged the complaint only after police given intimation about dead body. There is no remark in the postmortem report as to probable time of death. Dead body was found in a decomposed condition and though there is opinion about probable cause of death as "stab injuries," however, sharp weapon allegedly used in the assault, was not recovered during the course of the investigation. Though, one iron rod and clothes shown to have been recovered at the instance of the applicant, however, there are no blood stains on it. So far as the description of the injuries as detailed in column no.17 of the postmortem report, almost all injuries are stab wounds having clean cut edges. Thus, in all

probabilities, the injuries as mentioned in column no.17 of the postmortem report are not possible by the weapon iron rod. There is no criminal history. Even, motive is also weak. Thus, considering the entire aspect of the case, I am inclined to release the applicant on bail, with certain conditions. Hence the following order :-

O R D E R

- I. Application is hereby allowed.
- II. The applicant KANIFNATH MANIK MAVAS in connection with crime No.I-28 of 2020 registered with Newasa police station, District Ahmednagar for the offences punishable under Sections 302, 201, 177, 120-B read with Section 34 of IPC, be released on bail on furnishing personal bond of Rs.20,000/- (Rs. Twenty Thousand) with one solvent surety of the like amount on following conditions :-
 - a) The applicant shall not tamper with the prosecution evidence in any manner.
- III. Application is disposed off.

(V.K. JADHAV, J.)

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