

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 BAIL APPLICATION NO. 1237 OF 2020
WITH
CRIMINAL APPLN NO.2132/2020 IN BA/1237/2020

SUNIL LAXMAN NIKAM
VERSUS
STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Temkar Rajendra K.
APP for Respondent-State : Mr. A. A. Jagatkar
Advocate to assist APP : Mr. Yuvraj V. Kakade

.....

CORAM : V. K. JADHAV, J.
DATED : 05TH JANUARY, 2021

PER COURT :-

1. Heard learned counsel for the applicant in Criminal Application no. 2132 of 2020. For the reasons stated in the application, the same is allowed in terms of prayer clause "A" and disposed off accordingly.

2. The applicant in Bail Application No.1237 of 2020 is seeking regular bail in connection with Crime No.314 of 2020 registered with Shevgaon Police Station, Tq. Shevgaon, District Ahmednagar for the offences punishable under Sections 302, 307, 323, 504 read with 34 of IPC. His

vre/-

application with similar prayer bearing Criminal Bail M.A. No.1079 of 2020 came to be rejected by the learned Additional Sessions Judge, Ahmednagar vide order dated 21.9.2020.

3. Learned counsel for the applicant submits that the investigation is over and the charge-sheet has been submitted. The applicant is in jail in connection with the present crime since 14.06.2020. Learned counsel submits that as per the allegations made in the complaint, the incident had taken place on trifling reasons as of sudden, without any premeditation. It further appears from the allegations made in the complaint that in the heat of anger, the applicant and the co-accused pushed the deceased and thereafter, present applicant allegedly given a single blow of spade on the neck of the deceased. Learned counsel submits that there is no previous enmity.

4. Learned counsel for the applicant further submits that immediately after the incident, the deceased was shifted to the Rural Hospital, Shevgaon. The medico-legal certificate
vre/-

issued by the Rural Hospital, Shevgaon is the part of the charge-sheet, wherein it is stated that “no injury mark present all over the body, however, patient’s condition was poor.” It further appears from the remarks column that the primary treatment was given and the deceased was referred to the Civil Hospital. Learned counsel submits that in terms of column no.17 of the postmortem report, injury nos.3 and 4 are the abrasions and injury nos.1 and 2 are on the lower back region and upper back respectively of the body of the deceased. So far as the injury no.5 is concerned, that is “Therapeutic tracheostomy wound seen over anterior side of neck”, however, injury no.5 appears to be a post mortem injury. Learned counsel submits that even though the Medical Officer has reserved his opinion about the probable cause of death, however, further given the cause of death as “death due to cerebral and pulmonary edema along with CT scan report showing diffuse axonal injury in case admitted and under treatment for A/H/O (Alleged History of) Head Injury”. Learned counsel submits that it does not appear from the investigation papers that the deceased was

vre/-

admitted and treated in the hospital for the history of head injury. Learned counsel submits that even the final opinion given by the Medical Officer is also confusing. The Medical Officer has not given clear opinion as to whether the death is homicidal or otherwise. Learned counsel submits that the applicant is ready to abide the conditions, if imposed by this Court while enlarging him on bail. The applicant may be released on bail.

5. Learned APP, assisted by Mr. Kakade, has strongly resisted the application on the ground that the informant/father of the deceased is the eye witness to the incident. In the FIR, a specific role has been attributed to the applicant. The applicant along with the co-accused pushed the deceased initially and thereafter, the applicant inflicted a blow of spade on the neck of the deceased. Learned APP submits that when there is direct evidence, the medical evidence at this stage, which is hypothetical in nature, should not be considered. Learned APP submits that there is strong possibility of tampering with the prosecution

vre/-

evidence, if the applicant is released on bail. The applicant may not be released on bail.

6. On going through the allegations made in the complaint and on perusal of the charge-sheet, it appears that the incident had taken place as of sudden, without any premeditation, for trifling reasons. It appears from the contents of the FIR that the deceased just as a fun slapped on the back of the present applicant and, therefore, the applicant and his real brother co-accused Bhagchand Nikam followed the deceased and pushed him. It further appears that thereafter the applicant has allegedly given a blow of spade on the neck of the deceased.

7. It appears that it is a case of single blow and the possibility cannot be ruled out that in the heat of anger, the applicant has given a blow of spade on the neck of the deceased. Apart from this, *prima facie*, it appears that the medical opinion about the probable cause of death is also not clear. Initially, deceased was taken to the Rural Hospital, Shevgaon, where the concerned Medical Officer
vre/-

has not found any external injury on the person of the deceased. On careful perusal of the postmortem report, particularly column no.17, it appears that the injury nos.3 and 4 are the abrasions and injury nos.1 and 2 are the wounds on the lower back and upper back respectively on the body of the deceased. There is no injury over the portion of neck. Even in the internal examination of head, no injury under the scalp was seen, no fracture seen. So far as the injury no.5 in column no.17 is concerned, the same is Therapeutic tracheostomy wound over the anterior side of neck. However, the same appears to be the postmortem injury. The concerned Medical Officer, who has conducted the postmortem examination, after receipt of certain reports, has given final opinion i.e. "death due to cerebral and pulmonary edema with CT Scan report showing diffuse axonal injury in case admitted and under treat for A/H/O Head injury." According to this opinion, if the patient is admitted and under treatment for alleged history of head injury, then, the complications as noted may appear. On perusal of the charge-sheet, I do not find any medical

vre/-

certificate or the discharge card of the deceased indicating that he was treated for the injury on his head. Even in the certificate issued by the Medical Superintendent Dr. Vikhe Patil Memorial Hospital, Ahmednagar, there is no reference as to the head injury of the deceased. However, it is for the trial court to consider the same on its own merits after the examination of the Medical Officer, who has conducted the postmortem examination and after going through the report of chemical analysis and histopathology report. However, considering the entire aspect of the case, *prima facie*, it appears that there was no murderous intention on the part of the applicant in commission of the alleged crime. I am thus inclined to release the applicant on certain conditions. The applicant and the informant are the neighbours. In view of the same, it would be just and appropriate if the entry of the applicant is restricted in the village till conclusion of the trial to avoid the possibility of tampering with the prosecution evidence. Hence, following order.

vre/-

ORDER

- I. The application is hereby allowed.
- II. The applicant SUNIL LAXMAN NIKAM be released on bail in connection with Crime No.314 of 2020 registered with Shevgaon Police Station, Tq. Shevgaon, District Ahmednagar for the offences punishable under Sections 302, 307, 323, 504 read with 34 of IPC on his furnishing PB. of Rs.20,000/- (Rs. Twenty Thousand) with one solvent surety of the like amount on the following conditions :-
- a] The applicant shall not tamper with the prosecution evidence in any manner.
- b] The applicant shall not enter within the limits of village Malegaon, Taluka Shevgaon, District Ahmednagar till conclusion of the trial.
- III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

vre/-