

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1421 OF 2020

Abhijeet s/o Babarao Chavan,
Age 20 years, Occupation Education,
R/o Ghare Colony, Mantha, Taluka
Mantha District Jalna.

**....Applicant
(Accused No.3)**

VERSUS

The State of Maharashtra,
Through Police Station officer,
Police Station Mantha Taluka
Mantha District Jalna.

....Respondent

.....
Advocate for Applicant : Mr. S. J. Salunke
APP for Respondent-State : Ms. D. S. Jape
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11-01-2021.

ORDER :

1. Present application has been filed by original accused No.3 who has been arrested in connection with Crime No.244 of 2020, dated 30-06-2020, registered with Mantha Police Station District Jalna for the offences punishable under Section 302, 120(B), 109 of Indian Penal Code and under Section 4/25 of Indian Arms Act. Now the charge-sheet has been filed and the case has been committed to Court of Sessions and thereby it has been numbered as Sessions Case No.137

of 2020. Present applicant came to be arrested on 07-07-2020.

2. Heard learned Advocate Mr. S. J. Salunke for the applicant and learned Additional Public Prosecutor Ms. D. S. Jape for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is a student pursuing B.Tech. (Food Technology) from Rajiv Gandhi College of Food Technology, Parbhani since 2018. His native place is Mantha and due to pandemic situation since his college was closed, he came to his native place. Perusal of the First Information Report would show that main accused i.e. accused No.1 Shaikh Altaf Shaikh Babu had one sided love for a girl from the same village. The girl was aged 18. As the accused No.1 Shaikh Altaf Shaikh Babu used to harass her and was impressing that she should accept his love and marry him; the accused No.1 was given understanding by the family members of the girl. Still the activities of accused No.1 were not decreased, therefore the family members ultimately settled her marriage. Her marriage was performed on 26-06-2020. After the rituals at her matrimonial home, she had come to Mantha on 30-06-2020 to be with her parents. On that day she went along with her mother and neighbour to the market place for

purchasing clothes for her. In the market, the accused No.1 had stabbed her to death.

4. It has been further submitted by the learned Advocate for the applicant that the First Information Report would show that the present applicant was not even present at the spot. So also the statements of eye-witnesses would show that only one person was present at that place and he was the assailant i.e. accused No.1. The present applicant is not disputing that the death of girl is homicidal in nature, however the papers in the charge-sheet show that there are certain statements of witnesses who had seen that present applicant giving the knife to accused No.1. It can be seen from the statements of those witnesses that the accused No.1 had disclosed to them that he is taking that knife for cutting hen and when asked as to since when he is cutting hen, accused No.1 told that, they would know how he would cut the hen. From those statements it cannot be stated that the present accused had knowledge that accused No.1 wanted to commit murder of the girl. Taking into consideration those statements it cannot be stated that there is nexus between the offence and the present applicant. The investigation is over, charge-sheet is filed. The applicant would give

undertaking that he will not enter the jurisdiction of Mantha District Jalna till the trial is over. The applicant is ready to abide any condition that would be imposed. Learned Advocate for the applicant on the basis of these submissions prayed for bail.

5. Per contra, the learned Additional Public Prosecutor strongly opposed the application and submitted that the accused No.1 has committed murder of a innocent girl to whom it appears that he was having one sided affection. The call records those have been collected by the Investigating Officer would show that accused No.1, 2 and 3 used to be in contact with each other since many months prior to the incident. Further the weapon for murder has been made available by the present applicant. The murder has been committed in broad day light that too in a market place. There was no fault on the part of the poor girl whose life has been taken by such act. The offence that has been committed by the present applicant is with the common intention with accused No.1, and therefore, he does not deserve any kind of sympathy.

6. At the outset it can be said that the investigation is over when the charge-sheet is filed. Further physical custody of the present applicant is not required for the purpose of investigation. Under

such circumstance, the material that is on record is required to be considered. The First Information Report has been lodged by the mother of the deceased and she says about presence of only accused No.1. She is the eye-witness to the incident. Unfortunate mother was constrained to witness the brutal attack on her daughter who was married only few days earlier. She has given the fact also as to what were the constraints for giving the girl in marriage immediately after the completion of 18 years of age. The statements of eye-witnesses also show that only accused No.1 was present there and he had stabbed the girl brutally with the help of a knife. The post-mortem report shows that there were eleven surface injuries and almost all of them are incised wounds. The probable cause of death is given as, "Acute cardio respiratory Arrest due to hemorrhagic shock due to cut-throat injury due to violent assault." Definitely the death is homicidal in nature.

7. Now it is required to be considered as to what is the connection between the present applicant and the offence. The recovery of the murder weapon is at the behest of accused No.1 under Section 27 of the Indian Evidence Act. There is statement of one Sayyad Dilawar Sayyad Kasam, Sayyad Parvez Sayyad Babbu

and Rafiq Isaq Pathan who were stated to be present on 27-06-2020 at about 01.00 p.m. near water tank in Jawahar Colony. They had found accused No.1 to 3 there. Sayyad Dilawar and Sayyad Parvez say that they found one black colour knife in the hand of present applicant. Present applicant gave it to accused No.1. Sayyad Dilawar asked accused No.1 as to why he is in need of knife. Present applicant asked him as to why he is making inquiry. But then still he asked accused No.1 as to why he should possess a knife. Accused No.1 told him that he is taking the knife to cut hen. He then asked him since when he is cutting hen. Accused No.1 replied that he would know how he cuts hen. Sayyad Parvez has given similar statement, however another witness i.e. Rafiq Isaq Pathan states that he was along with his friend Pawan Waghmare and Shukurbhai. They were proceeding at about 03.00 p.m. on 27-06-2020 and they found all the accused persons near the water tank. He states that he had seen accused No.1 possessing knife. He made inquiry with accused No.1 and then accused No.1 replied him that he has taken the knife to cut the hen. Witness Rafiq Isaq has given a different timing i.e. 03.00 p.m. whereas the other two have given 01.00 p.m. Further Rafiq Isaq has not stated that he had seen Sayyad Dilawar and Sayyad Parvez at that time. Even

after the passage of two hours, it appears that same dialogues have been repeated. Even if we take the statements as it is, yet it cannot be prima facie considered that with knowledge the accused No.3 i.e. present applicant could have given the knife to accused No.1. Therefore, taking into consideration this aspects basically and the fact that the investigation is over, further physical custody of the applicant is not required, and therefore, the application deserves to be allowed, however stringent conditions are required to be imposed. Hence, following order.

ORDER

- 1) Application stands allowed.
- 2) Applicant Abhijeet s/o Babarao Chavan, who has been arrested in Crime No.244 of 2020, registered with Mantha Police Station District Jalna, for the offences punishable under Section 302, 120-B, 109 of Indian Penal Code and Section 4/25 of the Arms Act, 1959, in Sessions Case No.137 of 2020, he be released on P.R. of Rs.50,000/- (fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty-five thousand).
- 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) He shall not enter the jurisdiction of Mantha village till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the applicant should give complete address of his proposed residence with his mobile number. So also he should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual.

6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-