

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

BAIL APPLICATION NO. 1475 OF 2020

Adhikar @ Samadhan Anandsing Rajput,
Age 22 years, Occu. Labourer,
R/o Wadi-Shevadi, Taluka Shindhkheda,
District Dhule,
at present R/o Behind Baba Memorial
Hospital, Dindoli, Udhana (Surat),
(Gujrat State)

..Applicant

Versus

The State of Mahashtra,
Through Police Inspector,
Dondaicha Police Station,
Taluka Dondaicha, District Dhule

..Respondent

Mr A.B. Girase, Advocate for applicant
Mr B.V. Virdhe, A.P.P. for respondent/State

CORAM : SHRIKANT D. KULKARNI, J..

DATE : 29th October, 2021

ORAL ORDER :

1. It is an application for bail moved by the applicant after filing of charge-sheet by taking aid of Section 439 of Cr.P.C. in the background of rejection of his bail application at the hands of Additional Sessions Judge, Dhule.

FACTUAL MATRIX

(i) One Mr Vikas Patil, resident of Vikhran informed to the police officials of Dondaicha police station that one dead body of a male person is lying to the right side of the *charee* of Vikhran to Jogshelu road at a distance of 500 meters ahead of sub-station. Upon receiving the information, the police officials rushed to the spot. Vikas Patil and three to four persons were there. It was night time. Police officials noticed injuries on the throat of the deceased and blood stained clothes of the deceased.

(ii) Mr C.L. Salunkhe, Police Naik attached to Dondaicha Police Station lodged the F.I.R. on behalf of State on 22.4.2019 with Dondaicha Police Station against the unknown person for causing murder of an unknown person by using sharp edged weapon.

(iii) On the basis of F.I.R. lodged by Police Head Constable Asaram, Crime No. 61/2019 came to be registered at Dondaicha police station under Section 302 of Indian Penal Code against unknown person.

(iv) The investigation was entrusted to Mr Hemant Patil, Police Inspector, Dondaicha Police Station. The dead body was sent to Shri Bhausahab Hire Medical College and General (Civil) Hospital, Dhule for post mortem examination. The dead body was identified. The dead body was of Pawan Yuvraj Wagh. During course of investigation, co-accused Komalsing came to be arrested. During course of interrogation with co-accused Komalsing, role of this applicant/prime accused was revealed. The accused came to be arrested on 27.4.2019 in connection with Crime No.61 of 2019.

(v) According to the prosecution case, this applicant is a prime accused who alleged to have caused murder of Pawan Wagh by using sharp edged knife, which came to be recovered at the instance of co-accused Komalsing. The Investigating Officer found sufficient incriminating evidence against the applicant/accused as well as co-accused and filed charge-sheet against both of them for the offences punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code.

(vi) It is revealed during course of argument that co-accused Komalsing came to be released on bail by the Additional Sessions Judge, Dhule vide order dated 26.9.2019.

(vii) The applicant/accused Adhikar @ Samadhan Anandsing Rajput filed Regular Bail Application under Section 439 of the Cr.P.C. before the Additional Sessions Judge, Dhule. The learned Additional Sessions Judge, Dhule was pleased to reject his bail application below Exh 14 vide order dated 23.12.2019 in Sessions Case No.169/2019.

2. Heard Mr A.B. Girase, learned Counsel for the applicant and Mr B.V. Virdhe, learned A.P.P. for respondent/State at length.

3. Mr Girase, learned Counsel for the applicant vehemently submitted that the case is based upon circumstantial evidence coupled with story of last seen together. The investigating agency has not recovered any incriminating article/weapon at the instance of this applicant. The alleged recovery of knife is at the instance of co-accused Komalsing. There is no evidence on record to connect this applicant in connection with murder of Pawan. The applicant happened to be a friend of the deceased. Both of them travelled together from Surat to Nandurbar and after arriving at Nandurbar, they had a drink in one hotel namely Sony guest house. After having drink in the hotel, the deceased and the applicant parted ways in the evening. The dead body of deceased was found on next day in the night. There is no connecting evidence to show involvement of this applicant in causing murder of Pawan. There is absolutely no iota of evidence against the applicant. There is no motive to kill the deceased Pawan. The applicant is implicated in a serious crime simply on suspicion. He is from poor family. His

family members are depend on him. He may be released on bail when co-accused Komalsing is released on bail by the Additional Sessions Judge, Dhule.

4. Per contra, learned A.P.P. for the respondent/State strongly opposed to grant the bail to this applicant. He submitted that the applicant is a prime accused who has committed murder of Pawan Wagh by using sharp edged knife, which has been recovered at the instance of co-accused Komalsing. He invited my attention to the copy of post-mortem report and pointed out that it is a case of brutal murder. There were thirty-two external injuries found on the dead body which indicates the brutality. The accused was in the company of the deceased for whole day. On 21.4.2019, both of them had drink in one hotel. There are statements of witnesses who had seen both of them. On the very next day, the dead body of Pawan was found. The Investigating Officer has collected sufficient evidence against the applicant. He is the prime accused in this case. If he is released on bail, he may tamper with the prosecution witnesses. He is from State of Gujarat and there is likelihood of fleeing away from the trial.

5. Having regard to the submissions of learned Counsel for the applicant and learned A.P.P., I have gone through the record and proceedings, copy of F.I.R., papers annexed with the charge-sheet.

6. Admittedly, investigation of Crime No.61/2019 registered with Dondaicha Police Station has been completed and the Investigating Officer has filed the charge-sheet.

7. What are the factors to be kept in mind while considering the bail application relating to heinous offences have been indicated by the Hon'ble Apex Court in the case of ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee & another***, reported in ***(2010) 14 SCC 496***, wherein by relying on its earlier decisions in the case of ***State of U.P. Vs. Amarmani Tripathi***, reported in ***(2005) 8 SCC 21*** and in the case of ***Ram Govind Upadhyay Vs. Sudarshan Singh*** reported in ***(2002) 3 SCC 598***, the Hon'ble Apex Court has indicated the following factors to be borne in mind while considering the bail application :-

- i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii) nature and gravity of the accusation;
- iii) Severity of the punishment in the event of conviction;
- iv) danger of the accused absconding or fleeing, if released on bail;
- v) character, behaviour, means, position and standing of the accused;
- vi) likelihood of the offence being repeated;
- vii) reasonable apprehension of the witnesses being influenced; and
- viii) danger, of course, of justice being thwarted by grant of bail.

8. On careful scrutiny of the charge-sheet and the papers annexed thereto and having regard to the parameters for consideration of bail laid down by the Hon'ble Supreme Court in the case of ***Prasanta Kumar Sarkar, Amarmani Tripathi, Ram Govind Upadhyay (supra)***, it is to be seen whether the applicant has made out a case to grant bail. It is true that

nothing has been recovered at the instance of this applicant during course of investigation. The weapon allegedly used in the commission of offence seems to have been recovered at the instance of co-accused Komalsing. The case is based upon circumstantial evidence coupled with story of last seen together.

9. Mr Girase, learned Counsel for the applicant vehemently submitted that the prosecution has failed to establish the chain of circumstances. That exercise would be taken care of at the time of trial. I have to consider whether the applicant has made out a case to grant bail. The applicant is a prime suspect who alleged to have committed murder of his friend Pawan. It is also admitted position that this applicant and the deceased travelled together from Surat to Nandurbar. After arriving at Nandurbar, they had drink at Soni guest house. This applicant alleged to have posted their photographs with the deceased on facebook. There are four to five statements of witnesses who had seen the deceased in the company of this applicant on 20.4.2019, just before a day of recovering the dead body. There is one statement of truck driver, which speaks that after the incident, this applicant joined one truck as a Cleaner. The conduct of the applicant prima facie appears to be so much suspicious. The applicant seems to have not offered any kind of explanation as to what had happened after the evening when both of them had drink and parted the ways. Certainly, the finger would be pointed towards the applicant who was in the company of deceased for whole day on 20.4.2019.

10. On perusing the copy of post-mortem report, it is noticed that Pawan met with homicidal death. According to the post mortem report, probable cause of death in this case is due to stab injury to heart with multiple injuries sustained. There were thirty-two injuries on the person of the deceased

which shows the brutality while committing the murder. There are four statements of witnesses who had lastly seen the deceased in the company of this applicant. On the very next day, i.e. on 21.4.2019, the dead body of Pawan was found. The weapon has been recovered as pointed out earlier at the instance of co-accused Komalsing. The applicant alleged to have committed murder of his friend by using sharp edged knife. The applicant alleged to have inflicted thirty-two external injuries which shows type of brutality while committing murder.

11. The applicant is a permanent resident of State of Gujarat, which cannot be overlooked. Learned Additional Sessions Judge, Dhule is seized with the Sessions Case no.169/2019. The applicant may pray for expeditious trial. It is not a fit case to grant the bail.

12. Having regard to the above reasons and discussion, I proceed to pass the following order :

ORDER

The bail application stands rejected.

(SHRIKANT D. KULKARNI, J.)

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