

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

BAIL APPLICATION NO.1497 OF 2020

Santosh Haribhau Zavare
Age: 28 Yrs., occu. Agril.
R/o Taklidhokeshwar,
Tq.Parner, Dist. Ahmednagar = **APPLICANT**

VERSUS

The State of Maharashtra
Through Parner Police Station,
Parner, Dist. Ahmednagar = **RESPONDENT**

Mr.Santosh S.Jadhavar, Advocate for Applicant;
Mr.SB Narwade, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 11th January, 2021.

PER COURT :-

1. Present applicant has been arrested in connection with CR. No.462/2020 for the offence punishable under Section 302 read with 34 of IPC by Parner Police Station, District Ahmednagar. He is in custody since 15.7.2020 and, therefore, he has filed the present application under Section 439 of Cr.P.C. for bail.

2. Heard learned Advocate Shri SS Jadhavar

and Shri SV Sudrik, Advocate for the applicant and leaned APP Shri SB Narwade for Respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the investigation is complete and charge sheet has been filed on 10.10.2020 to the Court of JMFC, Parner, District Ahmednagar and the case has been committed to the Court of Sessions bearing Sessions Case No. 117/2020. Therefore, the custody of the present applicant is not required for the purpose of investigation.

. The contents of the FIR, which has been lodged by uncle of the deceased, would show that the offence has occurred in the intervening period of 13.7.2020 to 14.7.2020 and FIR came to be filed on 15.7.2020 at about 20.14 hrs. and, therefore, there is delay in lodging the FIR. Further, it can also be seen from the FIR that he was not having any personal knowledge as to with whom the deceased had gone. He says that he had discussion with the Cleaner, who was working with the deceased and brother of the deceased. They had told him that the deceased went along with the present

applicant at about 7.30 pm on 13.7.2020. Around 8.00 pm, Ajit had given a call to brother of the Cleaner working with the deceased. Ajit was found frightened at that time and he was asking password of the photo gallery in his mobile hand set. At that time, the person, to whom phone call was given, i.e. Karan heard that wooden log should be given. Thereafter, Karan had gone to the Cleaner working with Ajit and tried to contact Ajit, but they could not establish the same. It was also revealed by the informant that as Ajit's mobile got damaged, he was using Akshay's mobile. Ajit used to contact wife of the present applicant since last many days and, therefore, the present applicant had raised suspicion. Since Akshay was not having phone, Ajit used to give phone call to Karan to contact Akshay. The informant then made enquiry with Karan whereupon he told that he had recognized the voice of Ajit in respect of that phone call. The informant then says that he got it confirmed that the present applicant, on the ground of suspicion of some love relationship between his wife and Ajit; took Ajit along with his friend to Wadgaon Savtal and had assaulted Ajit severely and

then committed his murder.

4. It has been further submitted on behalf of the applicant that charge sheet would show statement of one Ajay Khamkar, who is brother-in-law of present applicant. He has stated that on 13.7.2020, he was contacted by the present applicant and they were asked to come to Wadgaon Savtal area. Accordingly, they went there at 5.00 pm. Present applicant's wife and his cousin Kiran Jambhalkar, i.e. accused No.2, were also present near the forest. At that time, present applicant disclosed as to why his wife was given phone calls to Ajit and messages to him. By praying for pardon to the sister, the witness asked his mother and sister to go home. Further, other two persons accompanying the witness as well as both the accused persons went away from that spot on separate motor-cycles. The witness further states that at about 7 pm, accused No.2 had given a phone call to him and told that present applicant has called him as well as the deceased to the forest. Witness Ajay went there at about 7.30 pm and found that Ajit was sitting on knees and was crying.

Accused No.2 was standing behind him. Present applicant was holding bamboo (*Kektadi*). The witness could find that Ajit was beaten. After the witness went there, present applicant gave hand-set of Ajit to him and asked him to read the messages, which were received from the mobile phone of the wife of the present applicant. Again the witness told the applicant that he should pardon Ajit. Thereafter, accused No.2 took out two sim-cards from the same phone and gave to the present applicant. Those sim-cards were destroyed. Thereafter, present applicant asked Ajit to take out his shirt. After he gave shirt to the present applicant, Ajit was asked to wear the jacket and leave the place on motor-cycle. Thereafter, Ajit started to go towards Gajadipur on motor-cycle. Though the witness tried to stop him, he drove his motorcycle in a high speed. From the said statement, it can be seen that at the most the case of the prosecution rests on 'last seen together theory'. The further connecting evidence that is shown is recovery of the stick and shirt of the deceased from the applicant.

5. The statement of wife of the applicant under Section 161 as well as recorded under Section 164 of Cr.P.C. would show that she is admitting that she was in love relationship with the deceased. Being husband, present applicant might have got angry. But, there was no intention on his part to kill the deceased. Otherwise as per the statement of the eye-witness, the deceased would not have allowed to go away from the said place. Possibility of an accident cannot be ruled out. The learned Advocate for the applicant, therefore, prayed for bail.

6. Per contra, learned APP strongly opposed the application and submitted that when the said witness had seen Ajit with both the accused persons, he has seen that Ajit had already received the injuries. The applicant was holding the weapon of murder, i.e. bamboo, which has been later on discovered under Section 27 of the Indian Evidence Act. The shirt of the deceased is also seized from the applicant. The material that has been collected and is forming part of the charge sheet, shows there is sufficient evidence against the present

applicant and, therefore, the application deserves to be rejected and learned APP prayed for rejected of the application.

7. At the outset, when the charge sheet has been filed, it can be taken that further physical custody of the applicant is no longer required for the purpose of investigation. Now, it is required to be seen as to what evidence has been collected against the present applicant. The evidence that is collected regarding communication between Ajit and wife of the present applicant would be to show motive for the applicant. But then whether the material is sufficient to connect the present applicant or not will have to be considered. Further, the post-mortem report, particularly column No.17 thereof, shows that there were about 28 injuries, which were surfaced injuries. As regards the internal injury is concerned, it appears that there was "Intracerebral hemorrhage in the brain". The right as well as left lung had contusion and haematoma. The viscera is taken and the opinion for the probable cause is "Internal contusions and Haematoma over both lungs." along

with multiple contusions over the body". Now, per se the said opinion cannot be taken as a conclusive proof for homicidal death. At the same time, it will not be out of place to mention here that when the spot panchanama has been executed, the motorcycle, which was lying by the side of the dead body of Ajit, was also seized and the description of the motorcycle would show that there was no much damage to the same. The dead body as well as the motorcycle were found on a *kaccha* road near the stream-let in the forest area of Wadgaon Savtal. The said spot panchanama does not mention about brake-marks. Another fact that is also required to be seen is that at this stage, there is no material which would clarify as to how much was the distance between the place, where the witness Ajay Khamkar had seen the deceased along with the accused, and the place where the dead body was found. The statement of the said witness does not clarify that he had seen the deceased falling from the motorcycle at a long distance. Therefore, it would be very much premature even to opine that there might be possibility of accidental death. From the statement of that witness it is certain that till

he had seen the incident at that place in the forest Ajit was live. When according to him, Ajit sat on motorcycle and drove it; we can prima facie see that the injuries were not to the extent to cause instantaneous death. Now, the said weapon is recovered and it is stated to be under Section 27 of the Indian Evidence Act. The length and the dimensions of the five pieces of bamboo have been given thus, 1) 38" long and 1 $\frac{1}{2}$ " in diameter; 2) 15" in length and 2 $\frac{1}{2}$ " in diameter; 3) 14" in length and 1.25" in diameter; 4) 12" length and 1" in diameter and 5) 17" in length and no diameter is given. It is yet to be proved that those pieces of bamboo are of the same long bamboo and whether, if they are taken together, could they cause death of a person. The recovery of the shirt of the deceased from the present applicant is definitely one circumstance going against him. Taking into consideration the other point that the investigation is already over, further physical custody is not required, it would definitely take a long time to stand the trial and, therefore, the application deserves to be allowed, however, with stringent conditions. Hence, following order, -

ORDER

- i. The Bail Application stands allowed;
- ii. The applicant-accused No.1, who has been arrested in connection with CR No. 462/2020 by Parner Police Station, District Ahmednagar (Sessions Case No.117/2020), be released on PR of Rs. 50,000/- with two solvent sureties of Rs.25,000/- each.
- iii. The applicant shall not tamper with the evidence of the prosecution especially by contacting the witnesses in this case and shall not indulge in any criminal activity.
- iv. The applicant shall not stay in Takali Dhokeshwar in Parner taluka and he should also not visit entire Parner taluka till the trial is over.
- v. The applicant should give detailed address of his place of residence where he proposes to stay with contact number to the Court as well as to the Investigating Officer.
- vi. There shall be compliance of Paras 12(1) to (6) of Chapter-I of Criminal Manual, whichever is applicable.
- vii. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE