

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1508 OF 2020

Dipak s/o Vinayak Kolekar,
Age 34 years, Occupation Rickshaw Driver,
R/o Behind Nandan Sweets,
Hedgewar Nagar, CIDCO,
Trimurti Chowk, Nashik.
(At Present in Sangamner Sub Jail) **...Applicant**

VERSUS

The State of Maharashtra,
Through Office In Charge
Sangamner City Police Station
District Ahmednagar. **...Respondent**

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Advocate for Applicant : Ms. Madhuri B. Jain
APP for Respondent-State : Mr. S. B. Narwade
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-02-2021

ORDER :

1. Present applicant has been arrested in connection with Crime No.72 of 2020, registered with Sangamner City Police Station District Ahmednagar for the offences punishable under Section 302, 396, 397, 120-B, 201 read with 34 of the Indian Penal Code and Section 3, 25 of the Arms Act, 1959. Present application has been filed under Section 439 of Code of Criminal Procedure.

2. Heard learned Advocate Ms. Madhuri B. Jain for applicant and learned Additional Public Prosecutor Mr. S. B. Narwade for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant came to be arrested on 09-02-2020 and he is in jail since then after the initial police custody period. Perusal of the First Information Report would show that it was against unknown persons. Informant is a jeweller and he says that when he closed his shop and had taken a black colour sack with certain gold and silver ornaments in it as well as cash, and had come in front of his house at about 07.00 p.m., he found a white colour car behind him. Three persons got down from that white car. One person damaged the front glass as well as side glasses of his car. When he shouted that they should not assault him but can take whatever they want, one person amongst them opened the rear door of the car and took away the black colour sack. The informant further states that after his shouts were heard by his friend Sanjay Walunj and his friend who had come on a motorcycle, he found that the friend of his friend Sanjay had put his motorcycle in such a way which will obstruct the way of the white car. Thereafter, he heard the noise of gun shot and then the car speedily went towards highway. As the informant had frightened, he went inside the house.

After about ten minutes he came out. People had gathered and then he came to know that Avinash Sharma, who was the friend of informant's friend Sanjay Walunj, has received bullet injury and was taken to hospital on motorcycle. Police had also arrived and after the inquiry it was revealed to him that silver ornaments worth Rs.1,05,000/- along with certain account books were stolen by those persons. The informant has only apparently described the assailants by age group and further details were not given. She further submitted that the statement of the wife of the informant is on the same line of First Information Report. Sanjay Walunj states that he was along with his friend Avinash and when they were chitchatting, they heard loud noise and, therefore, he came near the house of informant. Avinash was riding the motorcycle and they found informant and his wife were shouting. He got down from the motorcycle and started walking towards informant. He found that the car belonging to informant was damaged. A white car was also standing in front of them and Avinash had put his motorcycle to obstruct the way of white car. Thereafter, the person sitting on the driver's seat fired a gun shot which hit the thigh of Avinash and he fell down from the motorcycle. He himself ran towards his house due to gun shots. Avinash had got up and started running but again fell down near the house of one Bhausahab Kolpe. At that time the said car went speedily towards highway. He and his

another friend Sham Naikwadi took Avinash near Gunjalwadi tunnel to take him to Tambe Hospital. In the meantime, ambulance arrived and he was taken to Tambe Hospital, however Avinash was declared dead while undergoing treatment. Thereafter, he came to know about the entire incident from informant as to what had happened. There are also other witnesses who are stating the said fact, however none of them have named present applicant. The identification parade has been held and only the informant and his wife have identified the present applicant. Only circumstantial evidence has been collected and it is stated that the present applicant has led the discovery of a wooden stick. There is no such evidence which will show connection of the present applicant with the crime. Other co-accused persons have not been arrested and, therefore, it will take long time to stand the trial. She, therefore, canvassed for bail.

4. Per contra, learned Additional Public Prosecutor strongly opposed the application and submitted that there is ample evidence against the applicant. The informant was not knowing any of the assailant and, therefore, naturally the First Information Report was against unknown persons. A material that is collected would show the connection between the crime and the accused. After the applicant was arrested, he has discovered the stick with which he had damaged the glasses of

the car. The post mortem report of Avinash would show that the cause of death is due to gun shot. There was every effort to save him but he succumbed to the injuries. The offence that is committed is a serious in nature. The main accused is still absconding with the murder weapon. The present applicant has been identified by the informant and his wife, therefore when there is ample evidence on record, the applicant does not deserve discretionary relief.

5. At the outset, it is to be noted that though certain other accused persons are stated to be absconding, yet the charge-sheet has been filed, therefore the inference can be drawn that the investigation is over in respect of the present applicant is concerned. Now what evidence has been collected against the present applicant is required to be considered. In the First Information Report as well as the statements of witnesses, definitely name of the present applicant would not have been mentioned for the simple reason that even they are not coming with the case that they were knowing the applicant. In all it appears that three persons had come in a white care. The number of the car has not been stated by any of the witnesses. It is stated that one of those three persons had damaged the front glass and the side glasses of the front seats. The present applicant is stated to have discovered the stick with which the glasses were broken. However, it is to be

noted that the identification appears to have been over on 03-03-2020 and in the said identification parade the informant and his wife had recognized present applicant and accused No.2 Bharat Vishnu Patil. No statement of the informant or his wife appear to have been taken by the Investigating Officer after 03-03-2020 i.e. after they had identified applicant and then what role he had played in the alleged crime. Further statement of Sanjay Walunj has been taken. So also it appears that one more witness i.e. Prakash Surve in his statement says that he had seen the actual incident of gun shot, but then the charge-sheet does not show that they were called for identification parade. The connection of the applicant with the crime should be shown and when it comes to offence by unidentified persons then establishing their identity together with the role played by them in the alleged commission of the crime is important. Though a person has died in this case, yet it appears that the Investigating Officer has not done the investigation in serious manner.

6. The documents on record definitely show that death of Avinash is homicidal in nature, however to connect the present applicant to the crime those circumstances have not been brought in the charge-sheet, this is the prima facie opinion of this Court at this stage. There is absolutely no recovery of the silver articles which were stated to be

stolen from the informant. Conveniently the Investigating Officer has invoked Section 201 of Indian Penal Code. Now it is stated that the absconding accused No.4 is the mastermind and the gun would be with him.

7. Another fact that is also required to be noted is that all the accused persons are from different villages in different districts. The question, therefore, arises as to where and how they would have gathered to form common intention or hatched up a conspiracy. The evidence collected up till now does not show anything, therefore with this kind of evidence the applicant cannot be asked to linger in jail till the conclusion of the trial. Under such circumstance, present application deserves to be allowed. Hence, following order.

ORDER

- 1) The application is hereby allowed.
- 2) Applicant Dipak s/o Vinayak Kolekar, in Sessions Case No.21 of 2020, pending before learned Sessions Court, Sangamner, be released on P.R. of Rs.50,000/- (Fifty Thousand) with two solvent sureties of Rs.25,000/- each (twenty-five thousand).
- 3) He shall not tamper with the evidence of the prosecution in any manner.

- 4) He shall not indulge in any criminal activity.
- 5) In addition to that, the applicant should provide his address where he would reside till the conclusion of the trial to the learned Trial Judge as well as to the Investigating Officer by leaving his mobile numbers at both the places. So also he should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.