

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.399 OF 2020

LAXMAN EKNATH EDKE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.T. VEER, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

...

WITH

BAIL APPLICATION NO.1545 OF 2020

SAMBHAJI SHIVAJI THORAT

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.R. Sapkal and Mr. A.S. Sakhare, Advocates for the applicant

Mr. A.M. Phule, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10th FEBRUARY, 2021.

ORDER :

1 Both the applicants have been arrested, in connection with

Crime No.656/2019 by Newasa Police Station, Dist. Ahmednagar on 10.10.2019 and 08.10.2019 respectively. The said offence has been registered on the basis of First Information Report lodged by one Ganesh Sheshrao More, for the offence punishable under Section 302, 201 read with 34 of the Indian Penal Code. Present applications have been filed under Section 439 of the Code of Criminal Procedure, 1973 for bail.

2 Heard learned Advocate Mr. S.T. Veer for the applicant in Bail Application No.399 of 2020, learned Advocate Mr. S.R. Sapkal for the applicant in Bail Application No.1545 of 2020 and learned APP Mr. A.M. Phule for the respondent in both the bail applications.

3 It has been vehemently submitted on behalf of both the applicants that the applicants have been falsely implicated. Entire case is based on circumstantial evidence. There is no direct evidence stating that the applicants have committed the said offence. But only on the surmises of the statements of witnesses they have been involved. The investigation is over and charge sheet is filed. There are material contradictions in the statements of witnesses. There is delay in lodging the FIR. Statements of certain witnesses have belatedly recorded, for which there is absolutely no reason mentioned. None of the statements would show that there was any kind of motive for the present applicants to commit any such crime.

4 Learned counsel representing the applicant in Bail Application No.1545 of 2020 further submitted that the C.A. report does not support the prosecution, as blood stains have not been detected on the clothes. A spade appears to have been shown seized from the present applicant under Section 27 of the Indian Evidence Act. However, such spades are available in any house of agriculturist. The blood group on the spade has not been revealed. Therefore, there is nothing to connect the present applicant with the crime. The alleged extra judicial confession to one witness Pramod Ankush Thorat, who had not disclosed it for more than a month to anybody, is doubtful.

5 Per contra, the learned APP strongly opposed the application stating that there is ample evidence against both the applicants. In the FIR itself it has been stated by the informant that the deceased had good relations with the family of both the applicants, and therefore, he was on visiting terms with them. When the informant and his brother were chitchatting near S.T. stand with their friends at about 8.00 p.m. on 07.10.2019, they saw deceased with the present applicants on motorcycle. Accused Sambhaji Thorat was driving the vehicle and they went towards Telkudgaon. In the morning on the next day he could not see his father, and therefore, the inquiry started. They went to the house of accused Laxman Edke but his wife told that Laxman has gone to Gangapur last night and has not returned. Inquiry in the

house of accused Sambhaji Thorat also gave the same result. Therefore, the informant got suspicious. They inspected the house and found that there were blood stains around the house and when they went in an orange orchard by the side of the house of Laxman they found the dead body of father Sheshrao More. Thereafter the FIR was lodged. The murder weapon has been discovered by accused Sambhaji and the description shows that there were blood stains to the same. The P.M. report shows that there were four surface wounds and corresponding internal injuries. The probable cause of death is due to cardio respiratory arrest due to severe head injury. The murder weapon was given to Medical Officer for inspection and then he has certified that the injuries, those were found on the dead body, were possible with the said weapon. Statements of witnesses are supporting the informant. Further, there is extra judicial confession to one Pramod Thorat and it is stated that the said confession is given by accused Sambhaji on phone to him. When there is ample evidence against both the applicants they do not deserve any discretionary relief.

6 At the outset, it can be seen that the investigation is over and charge sheet is filed, therefore, we are required to consider what material has been collected. Taking into consideration the Inquest Panchnama and P.M. report it can be seen that there is possibility that death of Sheshrao would

homicidal in nature. Now, whether the present applicants are the author of the crime is required to be considered prima facie. The informant states that he had seen his father going along with the applicants at about 8.00 p.m. on 07.10.2019. The P.M. report does not state the probable time of death. Therefore, whether the informant's statement can be taken as last seen together, is a question. But then he says that at about 7.00 a.m. on the next day when his father did not come they searched for him. He and his relatives made inquiry with Laxman's wife, who told that Laxman has not returned. The FIR further states that accused Sambhaji had also not returned at night time and then they inspected house of Laxman, wherein they had found blood stains around, and found the dead body in orange orchard. The spot panchnama is of orange orchard and it is stated that the blood stains were found from that place till the house of Laxman, which was a new house at a distance of about 100 feet. The earth mixed with blood was collected. However, it is to be noted that there were no dragging marks. The said orange orchard does not belong to accused Laxman. Important point to be noted is that the statement of wife of Laxman does not say that she had witnessed any such incident. The spot panchnama as earlier stated, states the place in orchard as spot. Even the sketch, that is, prepared in the spot panchnama gives the same impression. Then whether the prosecution intends to say that the assault was near the foundation of new house of

Laxman and the body was thereafter taken to orchard. If it is so, then possibility is created regarding dragging marks. But then if the murder place is the spot in the orchard then how the blood stains were till 100 feet, where there was foundation of the new house of Laxman, is a question.

7 The statements of witnesses are almost on the same line of the FIR. The case is based on circumstantial evidence and the alleged discovery by accused Sambhaji as well as the extra judicial confession. The extra judicial confession is stated to be on phone to the cousin brother of accused Sambhaji. However, at this stage his CDR is produced, but it is yet to be proved. Another statement of one Sanjay Shivaji Thorat, the brother of accused Sambhaji has been recorded, who says that accused Sambhaji has taken his motorcycle, he had returned at the night time, but by parking the vehicle he has gone somewhere. In isolation these pieces of evidence cannot be so appreciated, and therefore, taking into consideration the overall aspects as to the evidence, that is collected, the applications deserve to be allowed. However, at the same time, stringent conditions are required to be imposed, as the witnesses are related to the present accused. Hence, following order.

ORDER

1 Both the applications are allowed.

2 Applicants viz. Laxman Eknath Edke and Sambhaji Shivaji Thorat, who have been arrested, in connection with Crime No.656/2019 dated 08.10.2019 registered with Newasa Police Station, Dist. Ahmednagar, for the offence punishable under Section 302, 201 read with Section 34 of the Indian Penal Code, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand).

3 The applicants shall not tamper with the evidence of the prosecution, in any manner.

4 They shall not indulge in any criminal activity.

5 If they commit any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

6 They shall not enter the jurisdiction of village Dedgaon, Tq. Newasa, Dist. Ahmednagar till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the applicants should give complete address of their proposed residence with their mobile number to the Trial Court as well as concerned Police Station. So also they should comply with the requirements under paragraph Nos.12 (1) to (6) of Chapter I

of Criminal Manual, (whichever are applicable).

7 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

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