

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

14 BAIL APPLICATION NO.1559 OF 2020

PRAKASH EKNATH DAMBALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent – State : Mr. N. T. Bhagat
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th February, 2021

ORDER :-

1. Present applicant has been arrested in connection with Crime No.70 of 2020 registered with Selu Police Station District Parbhani for the offences punishable under Sections 302, 109 read with 34 of Indian Penal Code and under Section 4, 35 of the Indian Arms Act. The applicant came to be arrested on 19-03-2020, since then he is in custody. Therefore, present application has been filed under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. N. S. Ghanekar for the applicant and learned APP Mr. N. T. Bhagat for respondent – State.

3. It has been submitted on behalf of the applicant that the investigation is complete and charge-sheet is filed, it would take long

time to decide the case. The evidence that is collected by the investigating agency would show that the role attributed to the present applicant is that of instigation and, therefore, it appears that the prosecution has invoked Section 109 of the Indian Penal Code. Perusal of the FIR lodged by the mother of the deceased would show that one Santosh, Kapil and one unidentified person had come in a car and had assaulted deceased with scythe and big knife. As regards the present applicant is concerned, it is stated that he was uttering “हाना हाना त्यास खल्लास करुन टाका आजुन मेला नाही”. Thereafter, the assailants gave threat to the persons who had gathered, that nobody should intervene and after deceased – Rahul was lying in the pool of blood, the assailants fled away in a white car. Similar statement has been given by eye witness Sangita Dambale and Dadarao Dambale. Though Dadarao has only stated the presence of the present applicant, but no further act has been attributed. The other evidence on record is the statement of one Munjaji, who states that accused – Santosh had given a phone call to him and under the pretext that the sugarcane is to be cut, had taken two scythe for cutting sugarcane from him. A scythe has been discovered by accused – Kapil. As regards the present applicant is concerned, his clothes have been recovered, however, the CA report shows the result that the report regarding the alleged blood stains on the same are inconclusive. With

this evidence, the applicant need not be asked to be languished in jail and, therefore, he be released on bail.

4. Learned APP strongly opposed the application and submitted that the presence and the specific role that has been played by the applicant has been told by the informant, who is the mother of the deceased and Sangita who is the neighbour. Present applicant was instigating the other three accused persons and the words uttered by him “he should be assaulted as he has not yet dead” shows the intention with which the applicant and co-accused had come. Further, the statement of Police Naik, Rama Hatagale posted at Selu Police Station would show that after committing the murder, all the accused had gone directly to police station in the same car and it was told to police station Incharge Smt. Borgaonkar, that they have committed murder of Rahul. He states that three persons, whose names have been mentioned, had gone there along with weapons. Statement of the informant and other witnesses have been recorded under Section 161 of the Code of Criminal Procedure. The postmortem report gives account of about 12 injuries. Out of them many are chop wounds and the probable cause of death that is given is hypovolemic shock due to multiple injuries and head injury. The seized weapons were sent to the medical officer and his opinion has been taken. He certifies that the injuries, those were noted

by him on the dead body are possible with those weapons inspected by him. Therefore, when ample evidence has been collected against the present applicant, he does not deserve discretionary relief of bail.

5. At the outset, it can be seen that the charge-sheet is filed that means the investigation is over and the further physical custody of the applicant is not required for the purpose of investigation. It is now required to be considered as to what evidence has been collected against the present applicant. The contents of the FIR would show that the present applicant had come along with two known accused persons and one unknown person. The informant who is the mother of the deceased gives the role of instigation to the present applicant. It can be seen that she has not stated that the present applicant had come with any weapon and any blow was given by him. No doubt, the inquest panchanama and the postmortem report as well as other documents on record are sufficient to even *prima facie* hold that death of Rahul is homicidal in nature, yet, as regards the role that is attributed was required to see from the statement of Sangita, who is attributing the same role as attributed by the informant to the present applicant. However, Dadarao states only the presence and the police constable, who states that other three accused persons had gone to the police station in the same car along with weapons, does not disclose the name or presence of the

present applicant. Under such circumstance, when the investigation is over and the abovesaid evidence appears to have been collected against the present applicant, he need not be asked to languish in jail. The application deserves to be allowed, however, with stringent conditions. Hence, the following order :-

ORDER

- 1) Application stands allowed.
- 2) The applicant – Prakash Eknath Dambale, who has been arrested in connection with Crime No.70 of 2020 registered with Selu Police Station, District Parbhani for the offences punishable under Sections 302, 109 read with 34 of Indian Penal Code, be released on PR. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- 3) The applicant shall not enter in entire Selu Taluka till the end of the trial. He is directed to give his complete address from Nasik. He has given his mobile number as it is reflected in the charge-sheet itself. He is directed not to change that mobile number till the end of the trial.
- 4) The applicant to comply the requirements under Para 12 (1) to (6) of Chapter-I of Criminal Manual before the trial Court (whichever

are applicable).

- 5) The applicant shall not tamper with the evidence of the prosecution in any manner and shall co-operate with the investigation.
- 6) The applicant shall not indulge in any criminal activity.
- 7) Bail before the trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm