

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 BAIL APPLICATION NO.1315 OF 2021

AMBADAS PARMESHWAR AMBEPAWAD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Salunke Sudarshan J
APP for Respondent – State : Mr. V. M. Kagne
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07.12.2021

ORDER :-

1. Present application has been filed under Section 439 of the Code of Criminal Procedure.

2. Present applicant has been arrested in connection with Crime No.159 of 2020 dated 26.07.2020 registered with Himayatnagar Police Station, Dist. Nanded for the offences punishable under Sections 302, 294, 506, 34 of Indian Penal Code.

3. It has been submitted on behalf of the applicant that perusal of the FIR would show that there was enmity. False implication cannot be ruled out. It has been submitted that though it is stated that there was quarrel between the present applicant and the deceased who are the real brothers at 5.00 p.m., yet the informant is not the eye witness on the

point. She had given names of present applicant and two others i.e. Baburao Dantalwad and Ravi Mistry. The postmortem report would show the homicidal death i.e. due to multiple injuries and fractures, but the connecting evidence to connect the crime with accused has not been collected by the prosecution. Witness Dhammapal's statement has been recorded belatedly after three days, when in fact his statement itself would show that on the same day of incident, at night time, he had taken photographs of the spot on the directions given by police. If he was eye witness to the incident, then he would have disclosed it to the police on the same day. Statement of witness Ravindra Shinde would show that in fact he was added as accused by the informant, but now he has been posed as eye witness. The statement of other witnesses have been recorded, which show that they had seen the deceased taken away by present applicants and the alleged extra-judicial confession was before one Subhash Silewad. His statement is also taken belatedly. Even the statement of wife of the present applicant has been recorded which was in fact a privileged communication between the husband and the wife. The discovery is at the instance of somebody else. The applicant is in jail since July, 2020 and he is ready to abide by the terms of the bail.

4. Per contra, the learned APP has strongly opposed the application submitting that the sufficient evidence has been collected which would

array present applicant and connect him with the crime.

5. At the outset, it is to be noted that the applicant came to be arrested on 26.07.2020 and the charge-sheet is also filed on 16.10.2020. Therefore, his custody is not required for investigation. Whatever evidence has been collected will have to be considered. The informant who is the wife of the deceased and the sister-in-law of the present applicant has narrated that there was dispute between the deceased and the present applicant on the count of partition. She states that partition had taken place five years ago, however, in respect of 5 Acres of land held by the mother, there was dispute between the sons i.e. deceased and the present applicant. Threats were given to the deceased on 25.07.2020 at 10.00 a.m. and 3.00 p.m. Then, she says that her husband went on his motorcycle for his work around 5.00 p.m. and then she had seen present applicant and his friend Baburao following deceased. Then, she had seen the present applicant returning around 8.00 p.m. and at that time, she could notice that his clothes were blood stained and then she came to know that her husband has been murdered by the applicant and his two friends. Therefore, though she appears to be not a direct eye witness, but the contents of the FIR to the extent that she had seen the applicant following the deceased and then coming back with blood stained clothes, is one of the piece of evidence. The

postmortem report would give a clear picture about the homicidal death. The discovery of blood stained clothes is at the instance of the present applicant. Now, there are statements of eye witnesses as well as the persons to whom the extra-judicial confession has been given. Whether to believe them or not would be the endeavour for the Trial Court at the end of the trial. But, at this stage, it appears that witness Dhammapal, though states that he had seen the incident, had kept quiet even when he had met the Investigating officer and he had taken the photographs of the spot. Merely because the statement of witnesses have been taken belatedly that will not be the sole ground on which their testimony can be disbelieved. It is further to be noted that witness Ravindra himself has accepted that his name was taken as accused by the informant and then he says that he is in fact the eye witness who had seen the accused persons taking deceased with them and, in fact, present applicant and accused Baburao consuming liquor under a lemon tree, after he had resolved the dispute between the applicant and deceased. At the cost of repetition, it can be said that whether to believe him or not would depend upon his entire testimony, but then his statement, at this stage, will have to be taken into consideration and it is to be noted that though a part of it appears to be against him or prosecution, yet the Investigating officer has in all fairness placed that statement on record.

The other statement of witness is on the point of witnessing the dispute between deceased and present applicant and the statement of another witness is on the point of extra judicial confession when he had seen the present applicant who had gone to the house of this witness on the same clothes, which were having blood stains. Again whether the statement of wife of present applicant can be believed or not or whether it is barred under the provisions of Indian Evidence Act would be considered by the Trial Court, but the fact remains that her statement is on record in which she has stated about the position of the applicant after he came back to the house. It is also to be noted that the present applicant was taken for medical examination after his arrest and it appears that injuries have been noticed on his person. Therefore, taking into consideration all these facts and also the statement of the witnesses under Section 164 of the Code of Criminal Procedure, this is not a fit case where the applicant should be released on bail. Under such circumstance, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm