

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 BAIL APPLICATION NO.1325 OF 2021

RAMAJI VIKRAMA PRASAD

VERSUS

THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Tambe Rahul A.
APP for Respondent-State : Mr. A.M. Phule.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 08-12-2021

PER COURT :

1. Present application has been filed under Section 439 of the Code of Criminal Procedure by the applicant who has been arrested in connection with Crime No.356 of 2020, dated 03-06-2020, registered with MIDC Police Station, Ahmednagar for the offences punishable under Section 302, 323, 504, 506 of the Indian Penal Code.
2. Heard learned Advocate Mr. R. A. Tambe for applicant and learned APP Mr. A. M. Phule for respondent-State.
3. It has been vehemently submitted on behalf of the applicant after taking this Court through the charge-sheet that the investigation is complete and charge-sheet has been filed. Therefore, the physical

custody of the applicant is not required for the purpose of investigation. Applicant came to be arrested on 03-06-2020 and since then he is in jail. The prosecution story, especially the FIR would suggest that there was injury to the neck, however, after the post-mortem was done, it appears that supplementary statement has been got recorded stating that the applicant had even assaulted the deceased on his chest. It was to fill the lacuna. Further, the statements of the witnesses also would show that the injury was to the neck. But if post-mortem report and the provisional cause of death certificate dated 08-08-2020 would give the probable cause of death as, "shock due to blunt trauma over the upper part of right side of chest, in a post-mortem finding showing right lung consolidation and abcess." The applicant is accepting that there was dispute of the applicant and his family with the family of the deceased, however, it was the deceased who had assaulted the applicant on the day of incident. The applicant had lodged report regarding the same on 01-06-2020 which was taken as non-cognizable offence. There was no intention on the part of the applicant to commit murder, and taking into consideration the evidence that has been collected, he deserves to be released on bail.

4. Per contra, the learned APP strongly opposed the application and submitted that there are eye-witnesses to the incident. Their

statements have been recorded and they have consistently disclosed that the injury was caused by fists by the applicant to the neck first and then with both the hands he had pressed the neck of deceased Sonu. He had also assaulted the deceased on his chest. The post-mortem report shows that there were in all seven external injuries and though opinion was reserved for chemical analysis and histopathological study, yet the provisional certificate of death gives a specific reason. The histopathological report is still awaited and, therefore, the final certificate has not been given. Learned APP further submitted that the applicant is the neighbour of informant and, therefore, possibility of tampering cannot be ruled out, so also commission of similar crime is also not ruled out in view of the enmity.

5. The prosecution has come with a case that one Sunita Parshu Kamble, who is the maternal aunt of deceased Sonu, lodged the report. The applicant is residing in the neighbourhood and there used to be quarrels between Sonu and applicant since last two to three months prior to the FIR. Incident took place on 31-05-2020 at about 09.15 p.m. Informant states that applicant picked up quarrel after he saw Sonu. He started asking as to why Sonu abuses him. Sonu had asked him as to why he abuses him and then applicant got annoyed. He came near Sony and started asking as to why he abuses him by

consuming liquor. The voices were raised and in view of the same, the informant, her husband, Sonu's sister and other persons gathered at the spot. All of them were asking the applicant and Sonu to calm down, however, the applicant was annoyed and in angry mood, he started giving blow with the fist. There was attempt to separate them, however, it is stated that the applicant did not lift the pressure which he had applied over Sonu's neck. Sonu became unconscious and fell down on the ground and then the applicant fled away. Sonu's sister then called one Pravin Mirpagar and one Prem Bhakare. They were asked to take Sonu to hospital. Sonu was taken to Bhairavnath Hospital and Dr. Sagar Borude after examining Sonu, asked them to admit Sonu to Civil Hospital. They then took him to civil hospital. Upon examination, he was declared dead. It is to be noted that the incident had taken place on 31-05-2020 and the FIR appears to have been lodged on 03-06-2020 and, therefore, there appears to be delay in lodging the FIR and at present we do not find any explanation for the same.

6. Supplementary statement of the informant came to be recorded on 04-06-2020 and in that she had told that applicant had assaulted Sonu by kicks and fists blows and fists were given on his chest.

7. It can also be seen that the statement of Sonu's sister has also

been recorded and the statement of husband of the informant is also recorded which are the similar statements. So also the statement of those two persons, who had taken Sonu to hospital, have also been recorded. None of them appears to have lodged or tried to lodge the FIR prior to 03-06-2020. Statement of Dr. Sagar Borude would show that the two persons who had brought Sonu, disclosed him that because of the epileptic attack, Sonu had become unconscious. However, at this stage, the statement only required to be noted in view of the fact that this witness has not produced any document before the Investigating Officer and it is not explained by him as to why he has not kept any record.

8. The post-mortem report as aforesaid gives seven external injuries. Out of them three are contused abrasions at right forearm, right knee and left elbow joint, which could not have been fatal injuries. Injuries No.1 and 2 are on the neck and chest. Injury No.6 is multiple abrasions on lower back, where as injury No.7 is old partially headed abrasions. Even Injuries No.6 and 7 cannot be said to be that injuries which could lead a person to death. It is to be noted that the chemical report of the viscera examination shows that the general and specific chemical testing has not revealed any poison. Though in view of the content of column No.21 which showed that the stomach content was 5

ml. reddish fluid, yet as aforesaid, the viscera rules out the possibility of poison, but it also does not say anything regarding consumption of liquor. The provisional cause of death certificate dated 08-08-2021 states that the histopathological report is awaited, but when it is provisional, still it is given that the injuries No.1 and 2 which are on the neck and the chest mentioned in column No.17, are not sufficient in ordinary course of nature to cause death. That means, even prima facie we can conclude that injuries No.1 and 2 have not led to the death of deceased Sonu. This provisional death certificate further states that from the present post-mortem findings there is external injury to the right side of upper chest where at the same place there is consolidation and pus is seen in upper lobe of right side. Therefore, taking into consideration this injury that was noted at the time of post-mortem, the finding is given or cause of death is given as, "shock due to blunt trauma over the upper part of the right side of chest." Now it is required to be considered as to why and how there was pus formation. Under such circumstances, it is even doubtful as to whether the death is homicidal at this stage because the histopathological report is awaited and the final medical report is also awaited.

9. No doubt there appears to be the fact that some incident had taken place on 31-05-2020 at about 9.00 p.m., yet whether it was

murder and whether it was caused by the present applicant would be the matter of proof and, therefore, in view of the observations above, the applicant deserves to be released on bail. Hence, following order.

ORDER

- 1) Application stands allowed and disposed of.
- 2) Applicant Ramaji s/o Vikrama Prasad, in Sessions Case No.125 of 2020, pending before learned Additional Sessions Judge, Ahmednagar, be released on P.R. of Rs.50,000/- (Fifty thousand) with two solvent sureties of Rs.25,000/- each (twenty-five thousand).
- 3) The applicant shall not stay as well as visit Nagapur Gaothan, Nagar MIDC Ahmednagar, till the conclusion of the trial.
- 4) He shall not indulge in any criminal activity.
- 5) At the time of tendering the bail papers, the applicant should give complete address of his residence to the concern court as to where he would reside till the end of the trial and he should also share his mobile number with the concern police station as well as to the Court.
- 6) Further there shall be compliance with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable, before his bail is accepted.

- 7) The applicant as well as his relatives shall not tamper with the evidence of the prosecution in any manner.
- 8) If any of the attempts of the bail are violated, the prosecution would be at liberty to file an application for cancellation of bail before Sessions Court.
- 9) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.