

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1355 OF 2021

Yogesh S/o Bhagvan Askar

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Shri S.G. Chapalgaonkar Advocate for Applicant.
Shri S.D. Ghayal, A.P.P. for Respondent-State.
Shri S.G. Shinde Advocate h/f. Shri A.K. Bhosle
Advocate for assist to APP.
...

CORAM: M.G. SEWLIKAR, J.

DATE : 1st DECEMBER, 2021

ORDER :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 350 of 2020 registered with Pahur Police Station, District-Jalgaon, for the offences punishable under Sections 302, 201, 120(B) read with Section 34 of the Indian Penal Code.

2. Informant is the brother of the deceased. The name of the deceased is Ravindra Namdeo Mahale. Ravindra had a garage of two-wheelers. On 26th December 2020 at 4.43 p.m., the informant got a telephonic message from one Santosh Eknath Mahale that the deceased was found in injured condition in front of Government Hospital, Pahur. When the informant went there, he found that the deceased was dead. On collecting CCTV footage, it was found that the deceased was taken by the applicant on his two-wheeler.

3. Applicant was arrested. After completion of investigation, charge-sheet has been filed.

4. Heard Shri Chapalgaonkar, learned counsel for the applicant and Shri Ghayal, learned APP for the State, assisted by learned counsel Shri Shinde holding for learned counsel Shri Bhosle.

5. Shri Chapalgaonkar, learned counsel for the applicant submits that the only evidence against the applicant is the last seen evidence and recovery of bamboo. He submits that last seen theory is a weak type of evidence and there is evidence to

show that the applicant had parted with the company of the deceased.

6. Learned APP Shri Ghayal and learned counsel Shri Shinde assisting the APP, submit that the time gap between last seen evidence and the death of the deceased is so small that there is no possibility of committing the offence by any other person than the applicant. They, therefore, prayed for rejection of the application.

7. On perusal of the charge-sheet, it is seen that there is a statement of witness Vijay Indarchand Jain recorded on 27th December 2020 indicating therein that on 26th December 2020 at about 2.45 p.m. he saw two motorcycles on Ekulati-Lohara road. On one motorcycle one person was riding and on another motorcycle three persons were riding. He saw that one person was sitting in between two persons. Both the motorcycles stopped there and the person sitting in between two persons was dropped there and he was made to seat on road and thereafter both the motorcyclists left the spot. Nobody paid attention to him as everybody was under impression that said person i.e. deceased was drunk. It is further seen that statement of one

Gokul Dere was recorded, which shows that on 26th December 2020 at 1.30 p.m. he had been to the garage of the deceased but deceased was not found there. The witness was told that deceased had gone with the applicant. When he went to the field of the applicant, applicant told him that the deceased had left for Palaskheda. Statement of this witness shows that the deceased was not found in the company of the applicant at 1.30 p.m or a little while later. Apart from this, it is revealed in the investigation that three persons had dropped the deceased in front of the Government Hospital, Pahur. No efforts were made to establish the identity of these three persons. It is not the case of the prosecution that the applicant was one of those three persons. In this view of the matter, prima facie there is evidence to show that the applicant has parted with the company of the deceased.

8. Applicant has no criminal antecedents. He will be available for trial. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- (i) Bail Application is allowed.

(ii) Applicant be released on bail on his furnishing P.R. Bond of Rs.30,000/- (Rupees Thirty Thousand) with one solvent surety in the like amount, in connection with Crime No. 350 of 2020 registered with Pahur Police Station, District-Jalgaon, for the offences punishable under Sections 302, 201, 120(B) read with Section 34 of the Indian Penal Code.

(iii) Bail Application is disposed of.

(iv) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]