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

BAIL APPLICATION NO.1397 OF 2021

Sharad Dayaram Rathod = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.Joydeep Chatterji, Advocate for Applicant;

Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 20th December, 2021.

PER COURT :-

1. Present application has been filed under Section 439 of Cr.P.C. The applicant is accused No.1, who has been arrested in connection with CR No.70/2021 dated 27.6.2021 registered with Songir Police Station, District Dhule, for the offences punishable under Sections 304-A, 279, 302, 120(b), 201, read with 34 of IPC and under Section 184, 134 and 187 of Motor Vehicles Act.

2. It can be seen that the FIR was, in fact, lodged initially for the offences punishable under Sections 304-A, 279 of IPC and under Sections 184, 134 and 187 of the Motor Vehicles Act. However, later on, how the investigation went, it has been

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registered under Sections 302, 120(b), 201 read with 34 of IPC.

3. It is the prosecution story now that there is illicit relation between the present applicant and accused No.3, who was wife of deceased and in order to eliminate the deceased, present applicant and accused No.2 alleged to have committed murder of the deceased by dashing a running vehicle on his person and creating a scene of an accident.

4. Heard learned Advocate for the applicant and learned APP for Respondent-State. In order to cut short, it can be stated that both of them have made submissions in support of their respective contentions.

5. It is pertinent to note that charge sheet is filed with the concerned Court on 29.9.2021, therefore, custody of the present applicant, who came to be arrested on 2.7.2021, is not required for the purpose of investigation. As aforesaid, the FIR has been lodged by cousin brother of the

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deceased under Section 304-A, 279 of IPC and Section 184 of Motor Vehicles Act that too against unknown vehicle. Post-mortem was conducted after inquest panchanama and spot panchanama. Probable cause of death is stated as, "cardio respiratory arrest due to hemorrhagic shock due to (Head injury) subdural haematoma.". It does not state any such injury and it's nature is homicidal death. As per the spot panchanama, it is stated that the incident occurred on Lamkani-Boris road, just near a temple. Statements of witnesses have been recorded. Some of them are hear-say or reached to the place of occurrence after the incident had taken place. The prosecution appears to rely on a statement of one Anil Borse, who is stated to be an eye-witness. He says that the incident had taken place at about 9.30 pm on 26.5.2021. He could notice that an *Innova* Car had dashed a pedestrian, but he could not notice the registration number of the car. When he went near that person, he found that he was his cousin brother. Question arises when he had noticed the incident on 26.5.2021, then why he had not informed the said fact to the police on the same day. The informant is also cousin

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brother of the deceased and the informant does not say that said Anil Borse had informed him that he had seen the incident. Even if we accept the statement of Anil Borse as it is, it would rather give picture of accidental death and as per his statement, the accident had occurred at 9.30 pm. The police have seized CCTV footage from one hotel namely Hotel Suruchi and the CCTV footage recorded from 19:41:56 to 20:48:36 would show that the deceased was along with the present applicant and co-accused No.2.

6. Learned APP was directed by this Court to seek instructions from the Investigating Officer and accordingly the Investigating Officer was present today before the Court. Learned APP submits through Investigating Officer, who is present that there is no CCTV installed in the temple, which is around or near the spot of the incident. He also informed that the CCTV footage that is collected during the investigation installed at Suruchi Hotel, is at a distance of about 12 kms. from the spot of the offence. Whether this piece of evidence, i.e. CCTV footage, can be taken as `last

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seen together' is a question, which has to be answered on the basis of evidence that comes before the Trial Court.

7. There appears to be no other evidence to support the case of the prosecution that there were illicit relations between accused No.3 and accused No.1. However, the learned APP submits that the CDR, that has been collected, shows that they were in contact with each other even on the day of the incident. That would be a circumstantial evidence at the most, that too depending on the evidence that would be adduced. Therefore, when this case is based on the circumstantial evidence and also the prosecution itself is coming with a case initially that it was the accident, then the present applicant deserves to be released on bail. Hence, following order, -

ORDER

i. The Bail Application stands allowed.

ii. The applicant be released on bail in connection with CR No.70/2021 dated 27.6.2021 registered with Songir Police Station, District Dhule, for the

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offences punishable under Sections 304-A, 279, 302, 120(b), 201, read with 34 of IPC and under Sections 184, 134 and 187 of Motor Vehicles Act on PR bond of Rs.1,00,000/- (Rupees One lakhs) with two solvent sureties of Rs.50,000/- each.

iii. The applicant shall not visit village Sarwad, Tq. And Dist. Dhule till conclusion of the trial.

iv. The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

v. Along with submitting the bail papers before the learned Trial Judge, the applicant shall give his complete address of the place of residence where he intends to reside till end of the trial.

vi. The applicant shall also give the said information to the Investigating officer along with mobile number and shall comply with the requirements set out in Para No.12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

vii. Bail before the trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE