

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1269 OF 2021

Digvijay Krushnath Patil .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Anand S. Patil for the Applicant.

Mr.S.H.Yadav, APP for the State.

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CORAM: BHARATI DANGRE, J.
DATED : 11th AUGUST, 2021

P.C:-

1. The present applicant, who is aged 23 years, seek his release on bail on being charge-sheeted for committing an offence punishable under Section 302 read with Section 34 of the IPC.

The submission advanced is to the effect that the case of the prosecution is based on circumstantial evidence and the last seen theory has been invoked, but the evidence does not establish chain of circumstances conclusively pointing out the guilt of the present applicant and in absence of the circumstances being closely linked to one another forming a chain, the applicant cannot remain incarcerated, since he has been arrested on 27/12/2019.

2. The investigation was set rolling, when a complaint was lodged by the cousin of one Ganesh, who was residing in his

neighbourhood since did not return home in the evening on 26/12/2019. On 27/12/2019, a dead body was found in the village and it was identified by the informant to be of his brother, Ganesh aged 26 years. He was apparently murdered and blood smeared stones alongwith the pieces of liquor bottles were found on the spot. The FIR came to be lodged against the unknown persons.

3. In order to implicate the applicant, the charge-sheet include several statements of the witnesses, who have last seen the applicant in the company of the deceased. The evidence to that effect is that the deceased visited 'Kinara Permit Room Beer Bar' Taluka Hatkanangale at around 7.30 p.m. as he was a regular customer. He started consuming liquor with one Tukaram Gawde. He continued consuming liquor from 7.30 p.m. till 9.30 p.m. when the applicant, one Shambhuraj Patil and Shubham Gavhane entered the Bar for consumption of liquor. They finished drinking at 10.45 p.m and approached the counter to settle their bill. At the same time, deceased Ganesh also reached the counter for clearing his bill and for some reason, a brawl occurred between them. The Manager of the Bar cautioned both the parties that it is time for closing the Bar. It is alleged that the present applicant, while leaving the Bar, carried with him a beer bottle. After coming outside the Bar, verbal altercation again ensued between the deceased and the applicant and his two accomplice. The prosecution case is that the applicant and the two persons present with him threatened the deceased that he will not be left alive and they proceeded towards Mahat Katta.

Thereafter, the shutter of the Beer Bar was pulled down. This is the version of Manager of the Bar and other employees of Beer Bar, whose statements are recorded.

The statement of the Manager of the Beer Bar is also recorded under Section 164 of the Cr.P.C., where he state that when the deceased and the applicant came at the counter, they were talking to each other and what they were talking was not noticed by him, since he was in a hurry to close the Bar as it was 10.45 p.m. However, when he closed the Bar at 11 o'clock, the applicant and the deceased were found outside the Bar and he state that he could realize that there was some tiff between them.

4. The last seen circumstance is sought to be stressed upon by the prosecution to prove the complicity of the applicant in the crime. Further, the recovery of the blood stained clothes is also attributed to the applicant on his arrest. The clothes have been forwarded for forensic analyses, but the report is awaited.

5. The postmortem report of deceased record crushed fractures of bitemporal, biparietal and occipital bones of cranial vault into multiple pieces with fracture lines in between middle and posterior cranial foosa. Column No.17 record 10 injuries and the cause of death is opined as 'head injury'. The injury is definitely caused by a hard and strong object, may be stone which was lying on the spot. The deceased was apparently heavily drunk, as per the Manager of

the Bar. The deceased and the applicant met accidentally and there is also a possibility that they parted ways outside the Bar. The prosecution will have to establish conclusively that the applicant is responsible for causing death of the deceased, but the material in the charge-sheet falls short of that, as the applicant claim that after he met the deceased, he left the spot.

6. The applicant is a young boy, aged 23 years, who is arrested on 27/12/2019. The case of the prosecution is based on circumstantial evidence and the guilt will be established at the trial on the evidence compiled in the charge-sheet involving ring of circumstances. Investigation is complete and the charge-sheet is filed. Till date, even charge is not framed. The applicant cannot be kept incarcerated indefinitely and, therefore, he deserves his release on bail, subject to the stipulation that he shall not tamper with the prosecution witnesses, in any manner. Hence, the following order.

: **ORDER** :

- (a) The application is allowed.
- (b) Applicant - Digvijay Krushnath Patil shall be released on bail in C.R.No.270 of 2019 registered with Shirol MIDC Police Station, Kolhapur on furnishing P.R. bond to the extent of Rs.20,000/- with one or two sureties of the like amount.
- (c) The applicant shall mark his attendance in the concerned Police Station on first Monday of every month between 10.00 a.m. to 2.00 p.m.

- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

(SMT. BHARATI DANGRE, J.)