

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2721 OF 2021**

Gorakhnath Bhimrao Babar	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Umesh H. Pawar, for the Applicant.

Mrs. Anamika Malhotra, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

**RESERVED ON : 08th December, 2021.
PRONOUNCED ON : 22nd December, 2021.**

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 752 of 2020 registered with Islampur Police Station, District-Sangli for the offences punishable under Sections 302, 120B, 504, 506 r/w 34 of the Indian Penal Code.

2 It is the case of prosecution that the deceased, namely, Akshay was the brother of informant. The deceased used to run A-One Fish Centre. On 29/10/2020 the informant received a phone call at about 8-00 p.m.

from deceased that accused Madan Sambhaji Kadam along with his two companions had come to his shop and quarreling with him over the earlier amount of fish which the latter had not given and rather asking prawns free of costs. The informant on his part advised not to quarrel with accused Madan Sambhaji Kadam, close the shop and come back to home.

3 According to prosecution, at about 8-00 p.m., the informant received a phone call from his friend, namely, Manoj Yadav that the deceased is lying dead near the field of Vishwas Barpate on Islampur Road. The informant accordingly started to proceed but meantime, received a call from maternal uncle Kiran Anand Pavekar, who told him that he had called deceased and he heard somebody saying, “याला धरा, धरा सोडु नका” and the deceased was pleading with accused Madan Sambhaji Kadam not to beat him. However, thereafter the phone of deceased was switched off. When the informant reached, he found the deceased lying dead having injuries on his person. Informant accordingly lodged the report against the accused Madan Sambhaji Kadam and his two companions.

4 Mr. Pawar, learned Counsel for the applicant, submits that accused

nos. 3 and 4, namely, Suraj Sampat Gaikwad and Madan Sambhaji Kadam have already been released on bail by the trial Court. The case is based on circumstantial evidence. There is no direct or indirect evidence against the applicant. Learned Counsel then invited my attention to the statements of prosecution witnesses, namely, Kiran Anant Pavekar and that of Imran Amin Shikalgar and would submit that their statements also do not in any manner show the involvement of the applicant in the alleged offence. Investigation is over. Charge-sheet has been filed. In such circumstances, the applicant deserves to be enlarged on bail, argued learned Counsel.

5 Mrs. Malhotra, learned APP, on the other hand, opposes the submissions and invited my attention to the disclosure statement given by the applicant under Section 27 of the Indian Evidence Act. Learned APP then invited my attention to the statements of prosecution witnesses, namely, Imran Amin Shikalgar and Dhananjay Jaywantrao Damame. Lastly, according to learned APP, the deceased died due to stab injury and in order to substantiate the same took me through the Postmortem Report wherein it is noted that the deceased had sustained as many as 31 injuries and the cause of death was hemorrhagic shock due to multiple deep stab injuries. Thus, there being no merit in the

application, the same is liable to be rejected.

6 Perused the investigation papers.

7 First of all I would like to point out the statement of Kiran Anant Pavekar, who is none other than the maternal uncle of the informant. In the FIR itself it is mentioned that when the informant had started to proceed towards the place of occurrence, he received the call of this witness on his mobile, who also informed him that while he had rang up the deceased, he heard somebody saying, “याला धरा, धरा सोडु नका” and the deceased was pleading with Madan Sambhaji Kadam not to beat him. However, the statement of the said witness dated 30th October, 2020 nowhere reveals that the deceased was so pleading or urging to accused Madan Sambhaji Kadam. This witness tried to improve his earlier statement by giving supplementary statement on 2nd November, 2020. However, again he was not sure about the name of accused Madan Sambhaji Kadam. Be that as it may, the fact remains that the said accused Madan Sambhaji Kadam has been admitted on bail by the trial Court.

8 This takes me to the statement of Imran Amin Shikalgar, which

has been pointed out by learned Counsel for the applicant and learned APP as well. It seems that this witness sales agricultural implements. According to this witness, on 29/10/2020 three persons came on motorcycle and purchased Vila and koyata from him. On 31/10/2020 he came to know about the murder of Akshay Ashok Bhosale. He then saw the arrested accused in the police station and identified them as the same persons, who had purchased vila and koyata. Interestingly, no Test Identification Parade was carried out in respect of those persons. In my considered opinion, this statement at this stage, will not further the case of prosecution, since no evidence is forthcoming to show that the present applicant had used sickle in the commission of crime.

9 The next statement is that of Dhananjay Jaywantrao Damame. This statement shows all about the role of accused Madan Sambhaji Kadam, who had quarreled with the deceased and had threatened. I have already pointed out that the accused Madan Sambhaji Shinde is already on bail. Therefore, statement of this witness does not further the case of prosecution.

10 The last incriminating circumstance is discovery statement allegedly given by applicant pursuant to which his clothes came to be

seized.

11 Having regard to the material on record and the fact that the case is based on circumstantial evidence, the prosecution has not been able to establish positive circumstance, prima-facie, showing the complicity of the applicant in the offence. Investigation is over. No criminal antecedents are forthcoming. In such circumstances, keeping the applicant in the custody is unwarranted. Hence, the following order.

ORDER

(i) Applicant- Gorakhnath Bhimrao Babar shall be released on bail C.R. No. 752 of 2020 registered with Islampur Police Station, District-Sangli on his executing P .R. bond in the sum of Rs.25,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Bail before the trial Court.

(v) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)

REKHA
PRAKASH
PATIL

Digitally signed by
REKHA PRAKASH
PATIL

Date: 2021.12.22
13:35:00 +0530