

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1765 OF 2020

Dada Kama Mahanavar	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Raju M. Yamgar, for the applicants.
Mr. S.H. Yadav, APP for the State/Respondent.

**CORAM :SARANG V. KOTWAL, J.
DATE :24th MARCH, 2021**

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No. 347 of 2020 registered at Vadgaon Nimabalkar Police Station, Taluka Baramati, Pune under sections 302, 201 read with Section 34 of the Indian Penal Code. The applicant was arrested on 10/07/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. Heard Mr. Raju M. Yamgar, learned counsel for the applicant and Mr. S.H. Yadav, learned APP for the State.

3. The FIR was lodged by Rama Bapu Madane who is brother of the deceased Kama Madane. He has stated that on 24/06/2020 at about 1.45 a.m. he received a phone call from his distant nephew Santosh Chormale that the deceased Kama had passed away. The informant rushed to Kama's house. That time Kama's wife Rupali told all of them that the deceased had gone outside for relieving himself. When he came back, he asked for water and he fell down. There was froth around his mouth. She was saying that the deceased had died because of snake bite. Initially the informant wanted to tell the incident to Police. However, the widow Rupali resisted and started crying loudly. At about 8 O'clock in the morning, the deceased was cremated. That time many relatives were present. After that, the informant observed that the deceased's widow Rupali, was keeping herself away. She was not mixing with others. She always looked in a frightened state. He remembered that there were some scratch marks on the nose of the deceased. Santosh Chormale, had telephonically called the informant and had told him that, in the night at around 23/6/2020, he had seen the applicant going

towards house of the deceased. On this basis the informant got suspicious and he lodged FIR.

4. Learned Counsel for the applicant submitted that prosecution story does not travel beyond mere suspicion. The dead body was not available for post mortem and therefore it cannot be said that the deceased had died because of some injuries caused by any person. Theory of snake bite was believed by all the close relatives of the deceased and therefore after a few days there was no new development causing the informant to lodge FIR against the present applicant and against widow of the deceased.

5. Learned APP opposed this application. She relied on the factum of recovery of heavy grinding stone at the instance of present applicant and also on the statement of Santosh Chormale who had seen the applicant going towards house of the deceased.

6. I have considered these submissions. With the assistance of learned Counsel, I have perused the charge-sheet.

Since there was no dead body, there was no post mortem and therefore cause of death is not available. The prosecution is relying on the statement of close relatives of the deceased. They are his parents and brother. All these witnesses have stated that they initially believed the story of widow that the deceased had died because of snake bite. Nobody had any suspicion though they had noticed scratch marks over his nose. Nobody had any objection for cremation of the dead body in the morning. Therefore, all these allegations have surfaced only on 09/07/2019. The incident was between night of 23/6/2020 and 24/6/2020. The body was cremated in the morning of 24/6/2020. There is really no reason to make allegations against the present applicant. The only circumstance which the prosecution is heavily relying is the statement of witness Santosh Chormale. His statement under section 161 of Cr.P.C. was recorded on 10/7/2020 and under section 164 of Cr.P.C. was recorded on 4/8/2020. In both these statements he has stated that at about 11 p.m. in the night this witness had seen the applicant going towards the house of the deceased. Beyond this he has not stated anything. Therefore,

theory of last seen together with the deceased is also not available with the prosecution. Recovery of heavy grinding stone also does not help the prosecution case. There is nothing to show that it was the weapon with which the offence was committed. The injury was seen on the right index finger of the co accused Rupali. It was described as human bite. It also does not help the prosecution because this medical examination was conducted on 14/7/2020 and not immediately. Even otherwise, this particular circumstance at the most can be used against co-accused Rupali but it has no connection with the present applicant. In this view of the matter, there is hardly any material against the present applicant. He can be released on bail.

7. Hence the following order.

ORDER

- (i) In connection with C.R. No. 347 of 2020 registered at Vadgaon Nimabalkar Police Station, Taluka Baramati, Pune, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty

Thousand Only) with one or two sureties in the like amount.

- (ii) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)