

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

15 BAIL APPLICATION NO.14 OF 2022

**MAYUR BAPUSAHEB NAIK
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Karpe Rahul R.
APP for Respondents/State : Mr. V.S. Badakh
...

**CORAM : M.G. SEWLIKAR, J.
DATE : 4th April, 2022**

PC.:-

Heard.

2. Case of the prosecution in nutshell is that deceased-Omkar Babasaheb Bhalsingh was returning home on 17th November, 2020 at 8.15 pm on his Passion motorcycle from Walki to Amberaiwadi. At Katwat locality, a motorcycle of black colour came from front side and gave dash to him. Deceased-Omkar fell down. Accused Vishwajeet Ramesh Kasar, Sunil Phakkad Adsare, brother in law of Vishwajeet (whose name the deceased did not know) started threatening him and made him sit in a vehicle, abducted him and took him to an unknown place. Accused beat him with iron pipe on his hands, legs, abdomen and other parts of the body. Five other persons were also accompanying them and they also beat deceased-Omkar. Motive was that

deceased had opposed the accused-Vishwajeet Kasar at the time of installation of statue of Shivaji Maharaj and was demanding Rupees One Lakh for the same. He was allowed to get down at village Babardi Bend near Mahadev Temple. On these allegations FIR came to be registered under Section 307 of the I.P.C.

3. Deceased was admitted in the hospital by his mother and friend Rahul Husale. Deceased was shifted to Asian Hospital, Ahmednagar and thereafter to Ruby Hall, Pune where he died during treatment. Offence was, therefore, converted into Section 302 of the I.P.C.

4. Shri Karpe learned counsel for the applicant submits that the only allegation against the applicant is that he had given location of the deceased to the other accused. He submits that applicant and other accused are friends and therefore giving the accused a friendly call does not indicate that he was one of the participants in the crime. Except this evidence, there is no other evidence against the accused to connect him with the offence.

5. Learned APP submits that statements of witnesses-Suraj Sathe and Rohit Kasar show that applicant was giving location of deceased to the other accused. There are CDR records indicating that applicant was in constant touch with the other accused.

6. It is not disputed even at this *prima facie* stage that applicant and other accused were friends. Even the tenor of the FIR shows that deceased-Omkar was knowing the other accused. The only allegation against the applicant is that he was giving location of deceased-Omkar to other accused. For this purpose prosecution has recorded statements of Suraj Sathe and Rohit Kasar. Witness-Suraj Sathe has stated in his statement under Section 161 of the Cr.PC that when he and his friends-Bharat Pawar and applicant-Mayur Naik were drinking liquor, applicant was speaking with Vishwajeet Kasar on phone. All of them again came back at 5.00 pm. They came back again at 6.30 pm in the square. At 7.30 pm applicant made a call to this witness and told him that he was in the square itself. Similar is the statement of witness Rohit Kasar. From the statements of these two witnesses, it does not appear that any of these witnesses was referring to deceased-Omkar. Therefore, on the basis of this vague statement it cannot be said that applicant was involved in the commission of the offence.

7. So far as CDR record is concerned, it is not the prosecution case that this was the only day on which the applicant and accused were talking on phone with each other. Since they are friends, it is not unnatural if they speak on phone with each other. Except this evidence there is no other connecting evidence showing involvement of the accused in this offence. Applicant has

no criminal antecedents. He is not likely to flee from justice. In view of this, I am inclined to release the applicant on bail. Hence the following order is passed:

ORDER

- I) Application is allowed.
- II) Applicant be released on PR bond of Rs.15,000/- with one solvent surety in the like amount, in connection with Crime No.1123 of 2021 under Section 302, 326, 143, 147, 148, 149, 120-B, 212, 365, 324, 323, 504, 506 of the I.P.C. and under Section 3(1)(i), 3(2), 3(4) of MCOC Act registered with Ahmednagar Taluka Police Station, District Ahmednagar on condition that he shall not tamper with the prosecution evidence.
- III) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]