

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.203 OF 2022

GOVIND S/O MANOHAR KALE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. V. D. Gunale
APP for Respondent-State : Mr. V. S. Badakh
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
20-04-2022**

**Date of Pronouncing the Order :
06-05-2022**

ORDER :

1. Present applicant has been arrested on 27-07-2021 in connection with Crime No.227 of 2021, registered with Tuljapur Police Station, District Osmanabad, for the offence punishable under Section 302, 365, 201 r.w.34 of IPC.
2. Heard learned Advocate Mr. V. D. Gunale for applicant and learned APP Mr. V. S. Badakh for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

3. At the outset, it can be said that when the charge-sheet is filed in the presence case on 01-10-2021, the further physical custody of the applicant is not required for the purpose of investigation. The evidence that has been collected is therefore required to be seen.

4. The FIR has been lodged by one Dagdu Manohar Sontakke regarding murder of his son Akash. He has stated that accused No.1 Vivekanand @ Anil Shivram Kale is related to him. There was a dispute between the family as regards the property of the mother of informant and that dispute was mainly highlighted by accused No.1 Vivekanand and one Jayram. He says that on 03-07-2021 when he along with his wife, son Akash and daughter-in-law were at home at about 10.30 p.m. Akash received phone call and after talking on a phone call he started going out of the house. Informant asked as to whose phone it was and where he was going, then Akash replied that the phone call was given by Vivekanand and his brother Jayram and some other persons are with him. They all are going to Pune and he has been called. Therefore, Akash went on his motorcycle to Ujani Pati. Since after a considerable time, when he did not return, his wife started contacting him. Around 12.00 p.m. Akash informed his wife that he is at Patoda and would come within five to ten

minutes. When she again contacted, his phone was switched off. Thereafter, in spite of search when he was not found, missing report was lodged on 05-07-2021. Thereafter, Vivekanand was making inquiry and though asked about the fact that Akash had gone along with him, he was hiding something. Thereafter, on 06-07-2021 the police informed that the dead body of Akash was found in the Ghat Section and the vehicle is also found. Informant went there and identified Akash and then the report was lodged. It is to be noted that at the time the report was against Vivekanand and one Jayram Kale. Name of present applicant Govind was not appearing.

5. It appears that the name of the applicant came to be disclosed by accused No.1 Vivekanand. Now, the charge-sheet is filed against Vivekanand and present applicant only and it appears that it was not filed against Jayram.

6. The post mortem report shows four injuries in Column No.17. One is, Cut throat wound present over front of the neck on right side at the level thyroid cartilage horizontally placed. Second injury is, lacerated wound present over occipital region. Third injury is, lacerated wound present over left parieto occipital region, and fourth injury is, lacerated wound over left and right parietal region and left

temporal region. It is the prosecution story that accused No.1 had assaulted deceased with knife and the present applicant had assaulted deceased with stone and tommy. That tommy has not been seized at all, so also from the spot no stone has been recovered. It is further the evidence that, while in police custody the present applicant had discovered knife allegedly used by Vivekanand by giving memorandum. How far it is admissible either for Vivekanand or for present applicant, is a question. Because unless it is brought within the admissibility under Section 21 or/and Section 30 of the Indian Evidence Act, no importance can be given to the same. There is no direct evidence in this case. Statement of one Ramesh Chavan is on the point of last seen together but he has stated that around 10.30 to 10.45 p.m. on 03-07-2021 Akash and one person had come to his house on motorcycle. Akash told him that there are guest with him and they want to drink liquor, and therefore, this witness handed over three whiskey bottles to Akash. This witness has not identified the present applicant. The other witnesses are either on hearsay point or have not identified the accused persons. No identification parade has been conducted, therefore, with this kind of evidence, the applicant need not be asked to languish in jail as it will take long time to stand his trial.

Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant Govind s/o Manohar Kale, arrested in connection with Crime No.227 of 2021, registered with Police Station, Tuljapur, on 06-07-2021, for the offence punishable under Section 120-B, 302, 201 r.w.34 of IPC, be released on P.R.Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- 3) He shall not tamper with the evidence of prosecution in any manner.
- 4) He shall not reside or visit village Ujani Tq. Ausa Dist. Latur till conclusion of the trial.
- 5) Before submission of bail papers, the applicant should give complete address of his residence with his mobile number. So also he should comply with the requirements under paragraphs No.12 (1) to (6) of Chapter I of Criminal Manual, whichever are applicable.
- 6) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.