

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 251 OF 2022

Mukesh S/o Dattatraya Mankar

Applicant

Versus

The State of Maharashtra

Respondent

Mr. S. J. Salunke, Advocate for the applicant.

Mr. A. A. Jagatkar, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

DATE : 5th APRIL, 2022.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 0551/2021 registered with Shevgaon Police Station, District Ahmednagar, for the offences punishable under Sections 306, 364, 385, 279, 504, 506 read with Section 34 of the Indian Penal Code.

2. Facts in brief are that informant is the son of deceased Vinayak Madke. First Information Report was lodged on 10th September, 2021. About 8 days before the incident, at 10.00 am, applicant, accused Rupesh Dattatraya Mankar and Macchindra

Eknath Dhanwade had hoodwinked deceased Vinayak by Fortuner Car bearing No. 2223. When deceased Vinayak confronted the applicant and other accused, they abused him. On the next day, when deceased Vinayak had been to the village, applicant, accused Rupesh Mankar and Macchindra Dhanwade demanded money from the deceased for drinking liquor. Deceased Vinayak refused to pay the money. On that count, applicant and other accused assaulted the deceased with kicks and fist blows and abused him. No complaint was lodged against the applicant and other accused as they have created terror in the society and nobody comes forward to given evidence against them.

3. It is further alleged in the First Information Report that on 9th September, 2021, at about 9.15 pm, applicant, accused Rupesh Mankar and Macchindra Dhanwade came before the house of the deceased in Fortuner car bearing No. 2223, called out the deceased and abducted him in their car. All these people were beating deceased Vinayak in the car. The screams of deceased Vinayak were audible. Informant started search of his father. He saw applicant and other accused beating his father with kicks and fist blows. Informant came back home and he started searching his father. He

found that his father had committed suicide by hanging. On these allegations, First Information Report came to be lodged.

4. Heard Shri Salunke, learned counsel for the applicant, Shri Jagatkar, learned APP for the State and Shri P. A. Bharat, learned counsel for the informant.

5. Learned counsel Shri Salunke submits that applicant has no concern with the alleged offence. He submitted that statement of the informant under Section 164 of the Code of Criminal Procedure shows that applicant was not involved in the alleged abduction. Informant has mentioned names of accused Rupesh Mankar and Macchindra Dhanwade only. He submits that PM report shows that there was no injury on the person of deceased Vinayak which belies the theory of prosecution of beating the deceased. He submits that applicant was not involved in the alleged offence. Offence is not punishable with imprisonment for life. Applicant is behind the bars since October 2021. He, therefore, seeks release of the applicant on bail.

6. Learned APP Shri Jagatkar submits that six cases are pending against the applicant and two of them are under Section 307 of the Indian Penal Code. He further submits that if applicant is released on bail, he will resort to similar activities again. He submits that the applicant and other accused had made the life of deceased Vinayak a hell. The applicant harassed the deceased several times on one or the other count. He was, therefore, left with no alternative but to commit suicide. He placed reliance on the case of Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) reported in AIR 2010 Supreme Court 1446.

7. Learned counsel Shri Salunke submits that out of six cases, applicant has been acquitted in four crimes. Two cases are pending against him.

8. Charge-sheet is filed. It is pertinent to note that there was no enmity between the applicant and the deceased. Tenor of the First Information Report shows that applicant and other accused used to demand money from the deceased for drinking liquor and when deceased refused to pay the money, applicant had beaten the deceased, abused him and threatened him of dire consequences.

9. It is alleged that the deceased was abducted by the applicant in a car. He was also beaten by the applicant and other accused. Learned counsel Shri Salunke submits that PM report does not indicate any beating by the applicant. Column No. 17 shows only ligature marks on the neck of the deceased. The allegations in the First Information Report clearly show that applicant assaulted the father of the informant as he had refused to pay money to the applicant for drinking liquor and the deceased was abducted by the applicant in his car. This conduct of the applicant in beating the deceased for non-payment of money for liquor and abducting him and again subjecting him to beating clearly shows that the applicant had made the life of the deceased difficult and he was left with no alternative than to embrace the death. In the case of Chitresh Kumar (supra) the Honourable Supreme Court made following observations :-

“17. In the present case, the charge against the appellant is that he along with other two accused “in furtherance of common intention”, mentally tortured Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. It is trite that words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. In the present case, apart

from the suicide note, extracted above, statements recorded by the police during the course of investigation, tend to show that on account of business transactions with the accused, including the appellate herein, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie, it appears that the conduct of the appellant and his accomplices was such that the deceased was left with no other option except to end his life, and, therefore, clause firstly of Section 107 of the IPC was attracted.

10. In view of these observations, there is *prima facie* case against the applicant. In addition to this, Crime No. 339/2014 for the offence punishable under Section 392 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of Arms Act is pending against the applicant. Having regard to the criminal antecedents, I am not inclined to release the applicant on bail. Hence the following order :

ORDER

- i) Application is dismissed.
- ii) It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1044 OF 2022 IN
BAIL APPLICATION NO. 251 OF 2022

Tulsiram Vinayak Madake

Applicant

Versus

Mukesh Dattatraya Mankar & another

Respondents

Mr. P. A. Bharat, Advocate for the applicant.

Mr. A. A. Jagatkar, APP for the respondent/State.

Mr. S. J. Salunke, Advocate for respondent No. 2.

CORAM : M.G. Sewlikar, J.

DATE : 5th APRIL, 2022.

PER COURT :

Application is allowed and disposed of.

(M. G. SEWLIKAR)
Judge

dyb