

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.235 OF 2022

ARJUN S/O ABHIMANYU GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. S. J. Salunke, Advocate for applicant.
Mr. B. V. Virdhe, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 16.03.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.334 of 2021 registered with Parbhani Rural Police Station, Dist. Parbhani for the offences punishable under Sections 302, 201 of Indian Penal Code.

2. Heard learned Advocate Mr. S. J. Salunke for the applicant and learned APP Mr. B. V. Virdhe for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the FIR is lodged by the P.S.I. attached to Parbhani Rural Police Station after the dead body was found and the postmortem report was received. The FIR is against unknown person. The provisional postmortem report

states that the death is due to respiratory failure due to strangulation, however, final opinion has not been given. Perusal of various remand reports would show that firstly the identity of the deceased was established. He was Amol Bharat Deshmukh. When the father of the deceased had gone to take mobile of Amol from one Sanket Samale, Sanket told that it was given to Amol. Amol Deshmukh secretly used to talk to sister of Sanket. She also told that the deceased was, in fact, friend of Sanket, but he had not remained honest with him. When the CDR of the mobile of the deceased was collected, it was seen that Sanket had contacted from the said mobile to others also and, therefore, Sanket was arrested. Thereafter, involvement of one juvenile was also revealed and the remand report then says that there is involvement of the applicant. In fact, the present applicant has not committed any offence. It appears that his name has been stated by co-accused and the said statement is inadmissible in nature. The juvenile is the brother of the present applicant whose involvement is now alleged. The custodial interrogation of the applicant is not required and, therefore, he deserves to be released on bail. He is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and submitted that the evidence in the nature of communication on mobile has been cached in CDR/SDR, so also the tower location. They were in

contact with each other prior to the murder and after the murder, the co-accused Sanket has even used the mobile of the deceased even after his death. Why the murder was committed is yet to be revealed in clear way though it appears to be on account of illicit relations. Further, there is attempt to tamper with the evidence of the prosecution, when threat has been given to witnesses. There is eye witness to the incident and accordingly, his statement has been recorded under Section 164 of the Code of Criminal Procedure. Custodial interrogation of the applicant is necessary in order to unearth the entire case.

5. It can be seen from the contents of the FIR as well as the police papers that the case is based on the substantial evidence. Though it has been tried to be stated that a witness whose evidence has been taken under Section 164 of the Code of Criminal Procedure is an eye witness, but perusal of the said statement would show that the said person was in contact with accused Sanket and they had talk with each other on phone only. He has not seen the actual incident of assault. The statement rather appears to be in the style of extra judicial confession by Sanket to him. It cannot be admissible against the present applicant. Statement of another witness Vaibhav would show that it is against two co-accused persons, who were allegedly with the deceased at one point of time and they had consumed liquor. Presence of present applicant is

not stated by him. Merely on the basis of the communication on phone with each other, CDR/SDR and tower location, it cannot be stated that there is concrete evidence against the present applicant. The physical custody of the applicant is not required. He deserves to be released on bail, however, on stringent conditions. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) In the event of arrest of applicant – Arjun Abhimanyu Gaikwad in connection with Crime No.334 of 2021 registered with Parbhani Rural Police Station, Dist. Parbhani for the offences punishable under Sections 302, 201 of Indian Penal Code, he be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- III) The applicant shall attend the concerned Police Station on every Monday and Thursday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet and cooperate with the investigation.
- IV) The applicant shall not tamper with the evidence of the prosecution in any manner.
- V) He shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm