

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.299 OF 2022

NITIN RAJU DHANDE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. S. G. Chapalgaonkar
APP for Respondent-State : Mr. A. M. Phule
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
25-04-2022**

**Date of Pronouncing the Order :
04-05-2022**

ORDER :

1. The applicant came to be arrested on 28-12-2020 in connection with Crime No.215 of 2020, registered with Nashirabad Police Station, District Jalgaon, for the offence punishable under Section 302, 201, 120 B r.w.34 of IPC.
2. Heard learned Advocate Mr. S. G. Chapalgaonkar for applicant and learned APP Mr. A. M. Phule for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that the investigation is complete and charge-sheet is filed, therefore, the

physical custody of the applicant is not required for the purpose of investigation. The FIR has been lodged by the father of the deceased. Deceased Dipak was the son of informant Bhagwan Raghunath Sapkale and in the FIR itself it is stated that deceased Dipak had illicit relations with the wife of present applicant. Informant is having only hearsay information as to who had met Dipak either on the day of incident or just prior to that. In spite of warning by the father, Dipak had not severed his relationship from the lady. Informant says that on 26-12-2020 at about 08.00 p.m. Dipak went with his friend Yadnesh @ Bhushan Anant Surve to see the father of their friend who had met with an accident. Dipak did not return and therefore in the morning informant asked Yadnesh as to where Diapk is. Yadnesh told that Dipak met him at the bus stand and told that he has some work at Savda and the family members will not allow him to go, and therefore, he should come to his house and tell that his friend's father has met with an accident and should take along with him. Therefore, he had come to fetch him and then by taking him on motorcycle, they had gone to Maskavad. Thereafter, they had taken their friend Prashant Tayde along with them and went to Savda. At that time Dipak told that he has illicit relations with the wife of present applicant and he want to

meet her as she had come to her parental home at Padalsa. All of them went to Padalsa and tried to meet the wife of applicant, but she told that since her brother is at home, they should go away. Thereafter, they went from Padalsa to Bamnot and at that time Dipak received phone call from the wife of applicant and she invited him. Therefore, Dipak asked Yadnesh and Prashant to get down and Dipak went to meet the lady. After about 1 ½ hour when Yadnesh contacted Dipak, his phone was switched off. However, they tried to contact the wife of the present applicant, it was picked up by a male person and he told that they are going to Jalgaon, and therefore, they should go back. Again Yadnesh was trying to contact Dipak, however, the contact could not be established. Informant then states that he along with other persons went to Padalsa to make inquiry about Diapk. They met present applicant and he told that he had met Dipak around 10.00 p.m. on a pan stall, but he has no idea where he had gone. Again search was taken and it was informed that a dead body has been found on the railway tract at Jalgaon Khurd. Informant went where the dead body was kept. He identified the dead body of Dipak, and therefore, informant says that after calling Dipak by the wife of present applicant, the present applicant and brothers of the wife of the applicant had killed Dipak.

4. All these contents show that it is only on the basis of suspicion that the informant is involving the present applicant.

5. There is no direct evidence in this case except the alleged discovery of axe and rope. The post-mortem report Column No.17 shows that deceased had 22 injuries and the probable cause of death is stated to be "death due to strangulation associated with cut throat injury over neck with head injury." However, with the kind of evidence that has been collected, the applicant need not be kept behind bar. He is ready to abide by the terms of the bail.

6. Per contra, the learned APP strongly opposed the application and submitted that the applicant can only have motive to commit murder of deceased in view of the fact that the deceased had illicit relation with the wife of the present applicant. Every precaution has been taken to screen themselves and after committing murder the dead body was thrown on the railway track. Even the place where the murder was committed, was shown by the applicant. There are statements of other witnesses who say that how the vehicles were hired and how the murder weapon was fetched. There can only be circumstantial evidence in such circumstances but the chain is

completed. Therefore, the applicant does not deserve to be released on bail.

7. The contents of the FIR are already narrated in the aforesaid paragraphs, and therefore, they are not reproduced. It can be seen that the case of the prosecution is resting on circumstantial evidence only. There is no direct evidence. The evidence against the applicant is in the nature of discovery under Section 27 of the Indian Evidence Act. Even if for the sake of arguments it is accepted that the applicant was having some motive, yet unless the chain of circumstances is complete, the applicant cannot be said to be the author of the crime. No doubt, the murder is brutal as there are about 22 injuries on vital part of the body. There are corresponding internal injuries and taking into consideration the cause of death it is to be noted that if the person escapes from strangulation, then injury to the head has been caused and also there is ut throat injury. Every precaution is therefore taken that the deceased shall not be left alive. Yet, when the case is resting on the circumstantial evidence and unless those circumstances are proved, the guilt will not be established beyond reasonable doubt. Another fact to be noted is that the case was adjourned by this Court for report of the

Chemical Analyser. Only two reports have been made available which are in respect of blood group of the present applicant and his wife. The blood group of the blood stains on the clothes discovered by the applicant is not yet made available. Under such circumstances, case is made out to grant bail, however, taking into consideration the possibility of the tampering of evidence, stricture conditions are required to be imposed. Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Applicant Nitin Raju Dhande who has been arrested in connection with Crime No.215 of 2020, registered with Nashirabad Police Station, District Jalgaon, for the offence punishable under Section 302, 201, 120(B) r.w.34 of Indian Penal Code, he be released on P.R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) He shall not visit or reside at village Sunoda, Taluka Raver, District Jalgaon, till conclusion of the trial.

- 5) He shall not indulge in any criminal activity.
- 6) 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.
- 7) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.