

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

BAIL APPLICATION NO.414 OF 2022

Rakesh Rohidas More

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.N.L. Chaudhari Advocate for Applicant.
Mr.S.B. Narwade, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 21st APRIL 2022

DATE OF PRONOUNCING ORDER : 5th MAY 2022

ORDER :

1. The applicant came to be arrested on 7th September 2021 in connection with Crime No.135 of 2021 registered with Shindkheda Police Station, Taluka-Shindkheda, District-Dhule for the offence punishable under Sections 302 and 394 of the Indian Penal Code.

2. Heard learned Advocate Mr. Chaudhari for the applicant and learned APP Mr. Narwade for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the case of the prosecution is resting on circumstantial evidence and the alleged discovery. It is also stated that there is a piece of evidence in respect of some video recording found from the mobile which was seized from accused No.1 – Sham More and in one of the video clip present applicant is seen with the newly purchased two wheeler of the deceased Premsing Girase. It is stated that the accused persons had committed dacoity in order to get the new motorcycle and mobile phone of the deceased and in that process, they had caused voluntary hurt to the deceased Premsing Girase who later on succumbed to the injuries. If we see the transcript of the videos in said mobile, then it is the mobile of accused No.1 Sham More and whatever evidence appears to be is mainly against him. Statement of person from petrol pump where accused No.1 Sham More had filled petrol in the motorcycle would show that he has seen knife in possession of accused No.1 Sham More at that time and the said weapon has been discovered by accused No.1. Accused No.1 has been seen in the CCTV footage of the petrol pump. Therefore, there is no concrete evidence against

the present applicant. He is ready to abide by the terms of the bail.

4. Per contra, the learned APP has strongly opposed the Application and submitted that the name of the present applicant is appearing in the First Information Report (for short "FIR") itself. There was no enmity between the informant and the accused persons so that they could be falsely implicated. Statements of the witnesses who had reached the spot when Premsing was still alive, would show that he made oral dying declaration to them that he has been stabbed by three persons with knife and those were resident of village Khalane. It was also informed by him that his motorcycle and mobile have been stolen by those persons. Therefore, there is ample evidence against the present applicant and therefore, the Application deserves to be rejected.

5. The FIR has been lodged by one Jagdish Jaysing Parmar, who is the friend of deceased Premsing Rajendra Girase. He was present when Premsing purchased the motorcycle on 6th September 2021. He says that since motorcycle was new and petrol was less, Premsing went to Mahavir Petrol Pump on the way for filling the petrol. At that time, the informant and his

friend Samadhan went ahead. They received phone call of Premsing at about 2.45 p.m. asking for their location and at that time Samadhan informed that they are just ahead. They saw that Premsing was coming from behind, but again when they reached at Darane village, they could not see Premsing. Samadhan gave phone calls to Premsing but the contact could not be established. Then, when they were in the village, a lady informed them that Premsing has been injured and he was near Chimthane substation and somebody has stolen his new motorcycle as well as mobile. Therefore, informant and Samadhan with other persons went to the said place. It was informed to them that Premsing has been shifted to Chimthane Government Hospital. All of them went to the hospital, where they found that Premsing has been declared dead. They found that Premsing had received injuries with sharp weapon in the middle of chest, right thigh at two places. When they were in village Songir, people told them that the assailants are Sham Yuvraj More, Rakesh Rohidas More i.e. present applicant and one Sandeep Fulchand Pawar, all resident of village Khalane, Taluka-Shindkheda and those persons were having motorcycle bearing No.GJ-05-EK-5556 and therefore, the FIR has been lodged.

6. The investigation is complete and charge-sheet has been filed on 29th November 2011 and the applicant is in jail for considerable time. If we consider the postmortem report, taking into consideration the injuries in column Nos. 17 to 20, the opinion has been given by the medical officer regarding probable cause of death as "hemorrhagic shock due to stabbing (injuring vital organ heart)". Therefore, definitely the death is homicidal in nature. The only question is, whether the applicant can be said to be one of the author of the crime.

7. Though the name of the present applicant along with co-accused is appearing in the FIR, it is surprising to note that within the span of nine hours the informant could get the names of the assailants, because according to him till 3.00 p.m. they could notice Premsing coming behind them on motorcycle and the information was received to the Police Station at 00.05 hours on 7th September 2021. The FIR has been registered at 9.09 a.m. It is not clear from the FIR, as to from which persons the information was gathered by the informant that the crime has been committed by these accused persons. It appears that there is no such further investigation by the Investigating Officer on that point because in the entire charge-sheet there is no statement of an eye witness. According to the informant, the

said information was given to him when he was at village Songir and that information was given by the persons from village Rohane and other villagers. None of the witness, whose statement has been recorded under Section 161 of the Code of Criminal Procedure, is from village Rohane, except one Mukesh Dhangar, who was the employee of the petrol pump where accused No.1 Sham More is stated to have filled petrol in the motorcycle which was allegedly belonging to deceased Premsing.

8. The prosecution appears to be relying on statement of one Yogesh Deelipsing Rajput, who is from village Darane and was knowing deceased. Deceased is stated to be the veterinary doctor in the village and therefore, was known to others. Witness Yogesh was proceeding from Songir – Dondaicha road towards Chimthane at about 3.15 p.m. He found Premsing in injured condition. Two persons were near him. One of them has been identified as Jagdish Mistari. When witness Yogesh went near Premsing, Premsing was alive and in the shaky voice he told that he has been stabbed by three persons from village Khalane and they had taken his new motorcycle as well as mobile and it is stated that they have gone towards Dhule. Whether this can be taken as dying declaration involving the present applicant, is a question. Similar statement has been given by Jagdish Mistari

and one Lotan Suresh Bhadane also. Even if it is considered as it is, it states about three unknown persons.

9. The other piece of evidence against the applicant is the discovery by co-accused. But unless it is proved that it can be admissible under Section 27 as well as Section 30 of the Indian Evidence Act, we cannot consider it. Present applicant appears to be the cousin brother of accused No.1 - Sham More and there appears to be prima facie evidence against accused No.1. Now the mobile phone of accused No.1 - Sham More has been recovered and in that mobile the videos had been stored. In one of the video, which is stated to be dated 6th September 2021 and at about 3:55:55 p.m. the accused applicant is seen with co-accused Sham More and in another video, which appears to be of the same day at 4:48:18 p.m. one person was doing shooting / videography of another person and that person who was trying to drive the motorcycle is the present applicant. It is stated that the motorcycle in both the videos is that of the deceased Premsing. The charge-sheet does not contend that after recording this Panchnama the Investigating Officer had tried to search at which place the said videography would have been done. Merely motorcycle belonging to the deceased was in possession, cannot be the criteria to connect the present

applicant as an author of the crime. With this kind of evidence the applicant need not be languished in jail. With strict conditions, he can be released on bail, as it will take long time to stand his trial. Hence the following order:-

ORDER

- i) The Application stands allowed.
- ii) The applicant – Rakesh Rohidas More be released on bail in connection with Crime No. 135 of 2021 registered with Shindkheda Police Station, Taluka-Shindkheda, District-Dhule for the offence punishable under Section 302 and 394 of the Indian Penal Code on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.
- iii) The applicant shall not enter the jurisdiction of village Khalane Taluka-Shindkheda District-Dhule till the conclusion of the trial. He should reside elsewhere and before submission of bail papers, the applicant should give complete address of his proposed residence with his Mobile Number to the Investigating Officer as well as the trial Court.

iv) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

v) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI , J.]

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