

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

BAIL APPLICATION NO.434 OF 2022

Vishwambar S/o Vitthalrao Sukre

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.M.P. Tripathi 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 : 4th MAY 2022

ORDER :

1. Applicant came to be arrested on 29th September 2021 in connection with Crime No.65 of 2021 registered with Daithana Police Station, District-Parbhani for the offence punishable under Section 279, 304-A, 302 of the Indian Penal Code. Present application is filed by the applicant under Section 439 of the Code of Criminal Procedure.

2. It is to be noted that the present applicant himself had lodged the First Information Report (for short "FIR") on 14th April 2021 contending that deceased Keshav Vitthalrao Bhosale is his cousin. Informant accused and Keshav were walking on road at about 9.00 a.m. on 13th April 2021. They had gone to village Shirsi Budruk to meet their relative and as they could not get any vehicle to go to their village Wadgaon Sukre, they were walking by the side of road. When they came near the field of one Ganeshrao Shivajirao Yadav, one motorcycle came from Bramhapuri in very high speed and gave dash to Keshav. Ganeshrao Yadav came running from his field and then the applicant - informant, Ganeshrao and motorcycle rider tried to pick Keshav but he was not holding his legs nor he was talking. The informant had noted the number of the motorcycle as MH-22-AT-6193 and therefore, he gave phone call to one Amol Sukre and called him from his village. Amol came in four wheeler and all of them took Keshav to Civil Hospital, Parbhani, where Keshav was declared dead. Under the said circumstance, offence came to be registered under Sections 279, 304-A of the Indian Penal Code and Sections 134 and 177 of the Motor Vehicles Act vide Crime No.65 of 2021. It appears that investigation was done

thereafter and said FIR turned out to be false and it was revealed that the present applicant and his son Karan Sukre had committed murder of Keshav.

3. With the aforesaid back ground, it has been submitted on behalf of the applicant that the applicant has been falsely implicated. When the Accidental Death (A.D.) was registered, there was no suspicion raised by parents of the deceased Keshav or even by wife of the deceased Keshav. Later on all of them appear to have concocted story and came with the case that at about 9.30 p.m. on 13th April 2021 witness Amol was called by the son of Keshav stating that Keshav is harassing his parents. When he went there, it was found that Keshav was under the influence of liquor and was harassing his parents by demanding amount of Rs.1,00,000/-. It was stated that Keshav himself was holding cash of about Rs.40,000/- in his pocket and was insisting that he should be given the amount asked, otherwise he would torn the cash of Rs.40,000/- and he started the said act. At that time present applicant and his son, co-accused Karan came there in white coloured Scorpio vehicle. Certain other persons also gathered. Applicant told his son that they should take Keshav in their vehicle as he is harassing his parents. Keshav was not

ready to go and applicant took wooden stick and given blow of the same in the back of Keshav. Witness Amol and Laxman Bhosle told the applicant that deceased Keshav has consumed much amount of liquor and he would die. But then applicant told that since it is their domestic matter the others shall not interfere. Accused No.2 Karan gave 2-3 fists to Keshav and asked him to come along with them. He also gave threat to Keshav that if he does not give company to them, the applicant will assault him. According to Amol, Keshav became unconscious, still he was taken by the accused persons in the Scorpio vehicle. Therefore, at the most, it can be said that the said witness is on the point of 'last seen together'. However, the charge-sheet itself contains statements of other witnesses who had seen deceased along with the applicant at different place at 10.00 p.m. and another witnesses say that only accused No.2 Karan was along with deceased Keshav and then accused No.2 Karan gave phone call to the applicant. There appears to be, therefore, contradictory statements. With this kind of evidence, the applicant need not be asked to remain in jail. Entire evidence is complete and charge-sheet is filed. Applicant is ready to abide by the terms of the bail.

4. Per contra, learned APP submitted that the charge-sheet contains sufficient evidence against the applicant for proving the guilt of the accused applicant beyond reasonable doubt. There are statements of witnesses saying that since deceased Keshav was under the influence of liquor and was raising quarrel with his parents, accused persons had forcibly taken him along with them. The death of Keshav is homicidal in nature and therefore, discretionary relief need not be granted to the applicant.

5. It is to be noted that deceased Keshav expired in the intervening night of 13th April 2021 to 14th April 2021 and his postmortem has been done between 11.05 a.m. to 12.05 p.m. on 14th April 2021. Taking into consideration the injuries noted in Column Nos. 17, 18, 19 and 20 of the postmortem report, it has been opined by the medical officer that the probable cause of death of Keshav is "due to hemorrhagic shock due to multiple vital organ injuries". Therefore, only on the basis of the postmortem report it cannot be said that it was homicidal death. It can be an accidental death also. Therefore, it would be the endeavour of the prosecution to rule out the possibility of accidental death of Keshav.

6. As regards the material that has been collected in the charge-sheet is concerned, it is the statements of the witnesses and as regards the present applicant is concerned, the discovery under Section 27 of the Indian Evidence Act. Statements of the witnesses have been recorded under Section 161 as well as under Section 164 of the Code of Criminal Procedure by the Police and Magistrate respectively. It appears that all of them have stuck in their statement under Section 164 of Code of Criminal Procedure to the statements given by them under Section 161 of the Code of Criminal Procedure. Then, as to why immediately either witness Amol Sukre or Gajanan Bhosle, Mukesh Bhosle, Laxman Bhosle, Keshav Kopnar and Ali Shaikh has not lodged any report, is a question. All of them were allegedly present when deceased Keshav was harassing his parents for money. According to these persons, accused persons had taken Keshav along with them in Scorpio vehicle at about 10.00 p.m.

7. Thereafter, there is a statement of witness Santosh Sakharam Gaikwad who says that he was with some other persons near Dr. Babasaheb Ambedkar Statue at about 10.00 p.m. on 13th April 2021. They saw the Scorpio vehicle driven by

the applicant and one Alim Shaikh was sitting on the front seat. He states that one person sitting at the back seat of the vehicle was giving kicks to the door of the vehicle. Then he says that he himself, one Amol Waghmare and Saheb Gaikwad occupied the said vehicle driven by the applicant. Those persons were not knowing the person who was sitting at the back seat, but then it could be noticed by them that he was under the influence of liquor and was giving abuses. He then states that at Bharaswad the applicant got down from the vehicle and Scorpio was driven by Alim Shaikh thereafter and accused No.2 Karan sat on the front seat. The vehicle was then stopped near the field of Ganesh Shivajirao Yadav and all of them got down. Accused No.2 Karan told this witness, who is stated to be labour, that they should take dinner. Accordingly they had dinner and at that time Ali Shaikh, Karan Sukre were near the Scorpio vehicle and Keshav was in the vehicle. It is stated that after the dinner those persons were resting for a while there. At that time accused No.2 Karan told them that Keshav was not in the vehicle and therefore, all of them started searching Keshav. After half an hour one Sunil Gaikwad gave phone call to accused No.2 Karan and told that they should come near the vehicle and they found that Keshav was lying on the road in the injured condition near

the field of Ganesh Yadav. Present applicant, one more unknown person, Karan Sukre, Ali Shaikh and Sunil Gaikwad were at that place. Thus, it can be seen that this witness is giving some different story. Same is the case with Shaikh Ali Shaikh Munir. He is not even saying about the presence of the present applicant at the said place.

8. Therefore, when different versions are coming, the only evidence that is against the applicant, is the last seen theory. When there is no direct evidence, the applicant deserves to be released on bail, with conditions. Hence the following order:-

ORDER

- i) The Application stands allowed.
- ii) The applicant - Vishwambar S/o Vitthalrao Sukre be released on bail in connection with Crime No.65 of 2021 registered with Daithana Police Station, District-Parbhani for the offence punishable under Sections 279, 304-A, 302 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 indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

iv) The applicant shall not contact with any of the prosecution witnesses.

v) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI , J.]