

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.436 OF 2022

DIGAMBAR S/O SHANKAR FATANGARE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. N. B. Narwade, Advocate for applicant.
Mr. V. M. Kagne, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 22.04.2022

ORDER :-

1. Present applicant has been arrested on 02.11.2021 in connection with Crime No.638 of 2021 registered with Shevgaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 307, 326, 324, 504, 506 read with Section 34 of Indian Penal Code. He has filed present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. N. B. Narwade for the applicant and learned APP Mr. V. M. Kagne for the respondent – State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. The FIR has been lodged by one Kalabai Baban Kolge, who is the mother of deceased Vishal, on 28.10.2021 in respect of alleged incident

that had taken place in the intervening night of 25.10.2021 to 26.10.2021. She has stated that she resides in her field and the present applicant is residing in the nearby area. Co-accused Sachin is the friend of deceased Vishal. She has stated that Vishal had gone to sell cotton grown in their field on 25.10.2021 and returned at about 4.00 p.m. Thereafter, he was at home. After dinner, Kalabai went to sleep inside the house, whereas Vishal was sleeping outside the house. Kalabai heard noise of crying of her son around 12.15 to 1.00 a.m. and, therefore, she came out of the house. She could found that Vishal was crying on the road and the present applicant and co-accused Sachin were near him on motorcycle. After they saw Kalabai, they fled away from the spot. Vishal was profusely crying and, therefore, after giving him water, she asked as to what had happened. He told her that he was abused by both the accused and, thereafter, the present applicant had caught hold of him and co-accused Sachin has assaulted him on his hands, knee, shoulders, wrists, stomach and face by means of iron Tommy. Informant then called her brother-in-law and took Vishal to Dr. Lune's Hospital at village Kukana, however, around 10.00 a.m., due to deterioration of the health of Vishal on 26.10.2021 and he became unconscious, he was told to be taken to the Ahmednagar. They brought him to Sai Asian Hospital, Ahmednagar and was still under treatment

and then the FIR was lodged.

4. Now, the charge-sheet is filed and perusal of the charge-sheet would show that the supplementary statement of the informant was recorded on 29.10.2021, in which she had disclosed that deceased had disclosed her that since he was found with the wife of co-accused Sachin at night time in his house, he was assaulted by the applicant and co-accused. She has also given reason that due to the fear of defame in the society, she had not earlier disclosed that deceased was found at night time elsewhere and that was the reason why he was beaten. Learned APP has pointed out statements of witnesses Ashok Kolge and Mahadeo Kolge and stated that Sachin had disclosed the said fact to them also. According to the learned APP, this narration of Sachin's statement by the witnesses can be taken as oral dying declaration. Definitely, such legal aspect is involved in the case, however, it would depend upon the ultimate evidence that is led by the prosecution and it should be within the parameters of Section 32 of the Indian Evidence Act. We are at a very *prima facie* stage and even if we take those statements as it is, the role attributed to be applicant is that he had caught hold of the deceased and, thereafter, co-accused Sachin had assaulted the deceased. At the most, it can be said that because of the facilitation of the circumstances, Sachin could inflict the blows. The postmortem report shows that there

were 16 surface injuries as described in column No.17 and all those injuries were antemortem as well as having corresponding internal injuries. Cause of death certificate shows the cause as “bilateral pulmonary edema with bilateral plural effusion in a case admitted with history of multiple injuries sustained”. From this *prima facie* evidence, it can be then stated that the cause of death has nexus with allegations about the assault. Tommy has been discovered from Co-accused Sachin under Section 27 of the Indian Evidence Act.

5. As aforesaid, statements of witnesses have already been recorded and the entire charge-sheet has been filed, therefore, when the custodial interrogation for the purpose of investigation is not required and with the abovesaid evidence as well as there is no possibility that the case would stand for trial in the near future, the applicant deserves to be released on bail, however, with stringent conditions. While imposing conditions, the security of the witnesses is also required to be considered and the assurance to them also needs to be given. With these observations, following order is passed :-

ORDER

- I) Application is hereby allowed.
- II) Applicant – Digambar s/o Shankar Fatangare, who has been arrested in connection with Crime No.638 of 2021 registered with

Shevgaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 307, 326, 324, 504, 506 read with Section 34 of Indian Penal Code, be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

III) The applicant shall not reside and visit village Chandan Khadak Wasti, Bhatkudgaon, Tq. Shevgaon, Dist. Ahmednagar till the conclusion of 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 trial Court as well as to the Investigation Officer.

IV) He shall not tamper with the evidence of the prosecution in any manner.

V) He shall not indulge in any criminal activity.

VI) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm