

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.510 OF 2022

PRABHAKAR @ SINGHAM S/O SAHEBRAO SHINDE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. V. D. Sapkal, Senior Counsel i/b Mr. S. R. Sapkal, Advocate for
applicant.

Mr. A. M. Phule, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04.05.2022

ORDER :-

. The applicant has been arrested on 22.08.2021 in connection with Crime No.199 of 2021 registered with Daithana Police Station, Dist. Parbhani for the offence punishable under Section 302 read with Section 34 of Indian Penal Code. He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Senior Counsel Mr. V. D. Sapkal for the applicant and learned APP Mr. A. M. Phule for the respondent – State.

3. The learned Senior Counsel representing the applicant vehemently submitted, after taking this Court through the contents of the FIR, that the FIR was against unknown person. There is no doubt

that death of Atul Pandharinath Bhuchale is homicidal in nature. The postmortem report as well as inquest panchanama do indicate that it is a murder. The question is whether the accused is one of the author of the crime. The investigation is complete and charge-sheet is filed against three persons i.e. Shaikh Tayyab Shaikh Ismail, Gajanan Gangadhar Waghmare and present applicant. The physical custody of the applicant is no more required for the purpose of investigation and, therefore, the contents of the charge-sheet are required to be considered.

4. The statements of witnesses would show that there are certain witnesses, who had seen three persons and out of them one is stated to be wearing yellowish shirt, stubborn, fair and bald and he made inquiry about Atul and then witness Hanuman Shinde is on the point of last seen together. He has also not given the names of the accused persons but is stated to have described along with whom Atul proceeded. Atul was till then along with one Shaikh Turab @ Kalu. Even his statement would show that the said person in yellowish shirt had made inquiry about Atul and had taken him with them. There is also statement of one Naushadbi Moin Shaikh, who is stated to have had illicit relations with the applicant. She has stated that there was love affair between herself and applicant and when on one occasion she was along with applicant, one Shivram Tidke give his phone in the hands of witness and told that

Atul Bhuchale from village Dhondi want to talk to her. Thereafter, she talked with that person in general way, but according to the prosecution, the applicant thereafter thought that there is illicit relations between the said witness and Atul. It was clarified by the witness to the applicant that Atul was defaming her, but he is not picking his phone. Then the statement of said witness appears to be in a way that the present applicant gave extra judicial confession to the witness regarding the murder. The other evidence on record is the discovery of the clothes by other two accused which were on the person of present applicant. How far it is admissible is a question and from the applicant, it is stated that the knife has been recovered which has been used in the commission of the murder. The applicant has been identified by the witness in the identification parade. With this evidence, the applicant need not be kept behind bar. It will take long time to stand his trial. The applicant is ready to abide by the terms of the bail.

5. The learned APP strongly opposes the application and submitted that the evidence that has been collected against the applicant is sufficient to prove the guilt beyond reasonable doubt. Apart from the fact that he was seen in the company of deceased Atul lastly, those witnesses have identified the present applicant. There is recovery at the instance of the applicant as well as co-accused. The clothes were blood

stained. The CCTV footage of the shop, from where new clothes were purchased by the applicant, has been collected. This is not a fit case where the applicant should be released on bail.

6. Almost entire facts have been narrated which are forming part of the charge-sheet and, therefore, they are not reproduced. The FIR is against unknown person. The inquest panchanama and postmortem report clearly shows that it was a brutal murder. Column No.17 shows in all eight injuries on the vital organs and the probable cause of death given by the medical officer is “death due to injury to vital organ lung and trachea with excessive blood loss due to injury to neck vessels due to assault by sharp object.”

7. The evidence which is connecting the applicant to the crime is in the form of statement of witnesses Dashrath Govind Bhuchale, Dnyanoba Giram, with whom three persons had made inquiry about deceased Atul. They have described one of the person who was prominently asking about the Atul. These persons had then contacted Atul asking about his location and that persons from Gangakhed have come to meet him. Statement of witness Hanuman Shinde would disclose that he had lastly seen Atul at 1.15 p.m. and at that time, he was along with one Kalu. When Kalu was about to leave for Namaz,

three persons came on motorcycle. One was wearing yellowish shirt and Atul went along with those three persons. Even this Hanuman had asked Atul as to where he is going, then Atul told that relatives from Gangakhed had come and he would be going to Pokharni along with them. Statement of said Kalu is also almost on same line. The further statement connecting the applicant to the crime is of Naushadbi, who has stated as to how she was knowing the applicant and how applicant came to know deceased Atul. Even after the murder of Atul, she had contacted the applicant and what the applicant told her thereafter about the phone calls is also *prima facie* connecting.

8. The witnesses with whom the applicant had made inquiry about Atul have identified the applicant in identification parade. The further connecting evidence is the discovery. The main discovery of the murder weapon is from the present applicant. Whether the clothes of the applicant which have been discovered by the co-accused can be said to be an admissible discovery or not would be decided by the trial Court, however, that is a piece of evidence at present against the applicant and, therefore, this is not a fit case where the applicant should be released on bail. Application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm