

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 782 OF 2021

Kapil s/o Rajiv Rapte

Applicant

Versus

The State of Maharashtra

Respondent

Mr. R.S. Deshmukh, Senior Counsel instructed by Mr. D.R. Deshmukh, Advocate for the applicant.

Mr. S.B. Narwade, APP for respondent/State.

Mr. A.K. Bhosale, Advocate for complainant.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 28th January, 2022.
PRONOUNCED ON : 10th February, 2022.

ORDER :

1. By this application under Section 439 of the Code of Criminal Procedure, applicant is seeking his enlargement on bail in connection with Crime No. 0323/2020 registered with Cantonment Police Station, Aurangabad, for the offence punishable under Section 302 of the Indian Penal Code.

2. Facts of the prosecution case can be summarised as under :-

Mantushkumar @ Montising (since deceased) was a friend of informant Vishal Madan Damodar. They were childhood friends. Montising was living alone in H-13, Peace Home Housing Society. There were three keys of the said flat, one was with the informant, the other one was with Montising. Informant is not aware as to with whom the third key was.

3. On 20th October, 2020, at 01.04 hours, Montising called on the mobile of the informant and asked him to come near White House, Padegaon. Informant went on foot to White House and found that Montising had come there on a fashion vehicle. Montising demanded the key of his flat from the informant. Montising had said that the key of his flat was in the car. Montising asked the informant to accompany him to the flat and to stay with him for the remaining part of the night. Informant declined and handedover the key of the flat which was with him.

4. On 20th October, 2020, at 7.00 to 8.00 am, when the informant got up, he found a message from Montising that hereafter the informant should not call him. Informant felt that Montising was upset with him as he had refused to accompany him in the last night.

Therefore, he called him at 10.30 am but Montising did not pick up the call.

5. On 21st October, 2020, at 1.00 to 1.30 pm, one Bablu called the informant from mobile No. 7620811173 and informed him that Montising did not pick up the phone and despite knocking the door, he was not opening the door. Said Bablu was having the car of Montising. Both the informant and Bablu went to their common friend Kapil Chopda and asked him to come to the flat of Montising. Bablu opened the flat with the key. They found that deceased Montising was sitting on a sofa in a pool of blood. Montising had injury on his head and face. He was having injury on his abdomen also. Thereafter, they informed the police about the incident. On these allegations, First Information Report came to be lodged under the aforesaid section.

6. Heard learned Senior Counsel Shri R.S. Deshmukh, instructed by Shri D.R.Deshmukh, learned counsel for the applicant, Shri Narwade, learned APP for the State and Shri Bhosale, learned counsel for the complainant assisting learned APP.

7. Shri Deshmukh, learned Senior Counsel submitted that deceased Montising had several enemies. According to him, the real brother of Montising was on bad terms with him. The name of his brother is Amit Kumar Singh Anil Kumar Singh. He submitted that the statement of Amit Kumar Singh Anil Kumar Singh shows that on 29th August, 2020, there was a quarrel between Montising and Amit Kumar Singh Anil Kumar Singh and both of them were injured. Montising had lodged a complaint against his brother Amit Kumar Singh Anil Kumar Singh on the basis of which NC No. 696/2020 came to be registered. He further submitted that Montising had illicit relations with one Soni Pagare @ Rani Pagare. Statement of Amit Kumar Singh Anil Kumar Singh under Section 164 of the Code of Criminal Procedure shows that about one year before imposition of lockdown, applicant and Soni Pagare were seen in an inappropriate position by Montising in the house of the applicant. There was a quarrel between Montising and the applicant. He further submitted that statement of Rani Pagare shows that Montising did not like Rani Pagare talking with the applicant. On that count, he had abused Rani Pagare and had also assaulted her. Statement of witness Mahesh @ Ganesh Palve shows that Montising had assaulted Rani Pagare. He further submitted that statement of Amit Kumar Singh

Anil Kumar Singh shows that Montising was on bad terms with Balu Gaikwad, his driver by the name of Rohit @ Bond and Amardeep. He submitted that this clearly shows that deceased Montising had many enemies. Therefore, it cannot be said that applicant had killed the deceased. He further submitted that there is no evidence indicating that the deceased Montising was killed by the applicant. The only evidence available against the applicant is recovery of a key of the flat of deceased Montising. He further submitted that the weapon of offence i.e. knife was recovered from the flat of one Akash from Wakad, Pune. He submitted that the incident took place at Aurangabad and the recovery was effected at Pune. He submitted that this itself confirms the falsity of the case of the prosecution. He submitted that these two pieces of evidence are not at all sufficient to show complicity of the applicant in the alleged crime. He submitted that the deceased was on inimical terms with the people mentioned above and any one of them could have murdered the deceased. However, all of his friends i.e. informant, Kapil Chopda, Amit Kumar Singh Anil Kumar Singh and Lavkush Kumar Anil Kumar Singh ganged up and falsely involved the applicant in this offence.

8. Learned APP Shri Narwade and learned counsel Shri

Bhosale submitted that applicant had an axe to grind against the deceased Montising. They submitted that Montising did not like Rani Pagare talking with the applicant. They submitted that Rani Pagare has admitted that Montising and she had physical relations. Rani Pagare is a widow. Statement of Rani Pagare shows that since she was talking with the applicant on phone, deceased Montising did not like it. They submitted that statement of Amit Kumar Singh Anil Kumar Singh under Section 164 of the Code of Criminal Procedure shows that he had expressed suspicion on applicant and Rani Pagare as Montising was on bad terms with the applicant on account of Rani Pagare and professional rivalry. They submitted that applicant admitted in the police station that he had to kill Montising as Montising had created unbearable pressure and therefore, he killed Montising. They further submitted that Yogesh Bhaskarrao Hoke is the friend of the applicant. Applicant had called said Yogesh Hoke from an unknown number. Later on, said Yogesh Hoke realised from the SMS of the applicant that applicant was calling from that unknown number. Applicant told him that he had switched off his both the mobile handsets as one Deepali had created problems for him. Said Deepali wanted the applicant to marry her. They submitted that this conduct of the applicant of keeping both the

phones switched off and calling Yogesh Hoke from another unknown number clearly speaks of his guilty mind. They submitted that soon after the incident, the applicant left for Pune. He remained away from his friends. The statement of witness Madhur Tamane shows that Montising did not like Rani Pagare talking with the applicant. On 10th September, 2020, Montising called the applicant and both of them abused each other on account of the relations between applicant and Rani Pagare. They submitted that on 10th September, 2020 at 11.00 to 12.00 in the night, applicant called up Madhur Tamane and stated that he would kill Montising by stabbing with knife. They further submitted that CDR of the applicant are obtained. It shows that on 20th October, 2020, at 1.30.49 am, location of the applicant is shown to be Peace Home Society. They submitted that this clearly shows that in the night of the incident, applicant had been to Peace Home Society. They submitted that this evidence coupled with the evidence of recovery of key and knife clearly shows involvement of the applicant in the alleged offence.

9. Charge-sheet is filed. On perusal of the charge-sheet and considering the submissions of learned counsel on both the sides, it is seen that there are statements of witnesses indicating that the

brother of the deceased Montising by the name of Amit Kumar Singh Anil Kumar Singh was not having good terms with the deceased. Similarly, there are statements of witnesses indicating that deceased Montising was not on good terms with Rani Pagare. In the statement of Rani Pagare, it has come that she was assaulted by deceased Montising as he did not like Rani Pagare talking with the applicant. Similarly, there are statements of witnesses indicating that deceased Montising was on cross terms with some people. Further, there are statements indicating that he was on cross terms with multiple people.

10. However, there are circumstances pointing the needle of suspicion towards the applicant. First of all, the key of the flat of deceased Montising was found with the applicant. His memorandum under Section 27 of the Evidence Act has been recorded and at his instance, the key was recovered.

11. Much was argued by learned Senior Counsel that knife was recovered from Wakad, Dist. Pune whereas applicant is resident of Aurangabad. It is pertinent to note that the applicant had switched off his phone. He was having two handsets and both of

them were switched off. He contacted his friend Vinayak Ravindra Kolhar from an unknown number and informed him that his father's health is not good and he should visit the house. Similarly, applicant had called his friend Yogesh Hoke from an unknown number. He did not receive the call. Thereafter applicant texted a message to him informing that applicant was calling him. Applicant offered explanation that he had switched off his both the numbers as one Deepali was pestering him and the said Deepali wanted him to marry her. To get rid of her, he has switched off the phone. It has come in the evidence of witness Yogesh Hoke that applicant wanted to stay with him but the witness did not permit him but referred him to one Akash. Applicant stayed with him and from the house of said Akash, knife was recovered. This shows the knowledge of the applicant about the place of concealment of the weapon used in the crime. This conduct of the applicant clearly shows his guilty mind.

12. Deceased Montising was the resident of Peace Home Society. Witness Raju Maske, a waiter in New Hotel, Padegaon, stated that at 12.30 pm, deceased Montising had ordered Chicken Masala, half Jeera Rice and 3 Rotis on 20th October, 2020. After half an hour, Montising came to the hotel and collected the food parcel. Post

Mortem report shows presence of semi-solid food in the viscera. Prosecution has produced mobile tower location of the applicant indicating that at 1.30 pm on 20th October, 2020, applicant's location was Peace Home Society. This clearly shows that location of the applicant was traced in the society of the deceased. Thereafter, the applicant went missing. His phones were switched off. All these circumstances cumulatively indicate involvement of the applicant in the alleged offence. In this view of the matter, there is prima facie evidence against the applicant. At this prima facie stage, it is not expected of the Court to analyse the evidence in a fine-tooth comb manner. Application is therefore devoid of any substance hence the following order :-

ORDER

Application is rejected.

(M. G. SEWLIKAR)
Judge

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2400 OF 2021 IN
BAIL APPLICATION NO. 782 OF 2021

Vishal Madan Damodar

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. A.K. Bhosale, Advocate for the applicant.

Mr. S.B. Narwade, APP for respondent No. 1/State.

Mr. R.S. Deshmukh, Senior Counsel instructed by Mr. D.R.
Deshmukh, Advocate for respondent No. 2.

CORAM : M.G. Sewlikar, J.

DATE : 28th January, 2022.

PER COURT :

Application is allowed.

(M. G. SEWLIKAR)
Judge

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