IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.917 OF 2022

Govind s/o. Nagorao Pawar ..Applicant
Vs.
The State of Maharashtra ..Respondent

AND

BAIL APPLICATION NO.896 OF 2022

Ranjit s/o. Vijaykumar Deshmukh ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr.P.P.More, Advocate for applicants in BA Nos.917 of 2022

Mr.S.J.Salunke, Advocate h/f. Mr.M.D.Gitte, Advocate for applicant in BA No.896 of 2022

Mr.S.P.Sonpavale, APP for respondent assisted by
Mr.V.S.Sakhare and Mr.S.A.Ambad, Advocates for informant

CORAM : R.G. AVACHAT, J.
DATE : AUGUST 18, 2022

ORDER :-

Both these applications have been filed under Section 439 of the Code of Criminal Procedure. They are taken up together since they arise from one and the same crime, i.e. Crime No.28 of 2022 registered with M.I.D.C. Police Station, Dist. Latur.

2. Heard learned counsel appearing for the parties.

3. The First Information Report (FIR) has been lodged by the Sub-Police Inspector, M.I.D.C. Police Station, Latur, on 18.01.2022. It is averred in the FIR that on 20.12.2021, A.D. was registered registered at the police station. One Rushikesh Pawar had died due to extensive burns suffered in his field at village Bhoisamudraga. The informant was entrusted with the enquiry into the A.D. It is his case that during enquiry, it was revealed that the applicant Ranjit (in Bail Application No.896 of 2022) was brother-in-law (husband of sister of deceased). Applicant Govind (Bail Application No.917 of 2022) was cousin brother of the deceased. The deceased had emotional involvement with the wife of real brother of applicant - Govind; while applicant Ranjit was in relation with one of the sisters of the deceased. On the intervening night of 19th and 20th December, 2021, both deceased and applicant – Ranjit had fetched non-veg food from one Dhaba. They had also bought liquor from one wine shop. Pans were also purchased from one Pan-stall. Both of them came back to the field of the deceased. Applicant – Govind joined them after a while. The deceased was heavily drunk. Applicant – Govind picked up a quarrel with the deceased over his (deceased) relation with the wife of Govind's

brother. Applicant – Govind assaulted on the head of the deceased with iron handle (agricultural implement). The deceased became unconscious. Both the applicants placed him on a wooden cot in the shed on the field itself. He was covered with a bed-sheet. Both the applicants set the deceased ablaze with petrol obtained from the Bullet motorbike of the deceased. On investigation, charge sheet has been filed.

4. Learned counsel for the applicant – Govind would submit that there is no material against this applicant, except a statement of one Swati, with whom the deceased was allegedly in relationship, to indicate her to have had seen applicant-Govind proceeding towards the field of the deceased sometime after the deceased and the applicant Ranjit went together to the field of the deceased. According to learned counsel, even it is not a case of last seen theory. He, therefore, urged for grant of bail to the applicant - Govind.

5. Learned counsel for the applicant- Ranjit would submit that the FIR has been lodged almost a month after the alleged incident. It has been lodged by a police official. Whatever has been

narrated in the FIR is based on the alleged confessional statements made by both the applicants to the police official. Same is inadmissible. The statements of others i.e. the relations of the deceased and the applicants, have been recorded even long after the FIR had been lodged. Learned counsel would further submit that the applicant Ranjit had himself disclosed his sister-in-law that he had been in the company of the deceased to fetch food parcel, wine and Pan by 09.00 p.m. on 19.12.2021. The applicant – Ranjit is a panch witness to the scene of offence panchnama. He is also a witness to the factum of receipt of the dead body. The conduct of the applicant – Ranjit is consistent with his innocence. Three out of five statements of different persons relied on by the prosecution are of a hotelier, Manager of wine shop and a Pan-stall owner. Those three persons simply stated that applicant – Ranjit and the deceased had come together to fetch food parcel, liquor and Pan. This cannot be incriminating circumstances since the deceased was brother-in-law of the applicant-Ranjit. The deceased had told Ranjit that he wanted to have a party with his friends in the field. He had, therefore, accompanied him on Bullet motorbike to fetch those articles. According to learned counsel, the applicant-Ranjit had parted with the company of the deceased latest by 09.30 p.m. The cause of

death is `extensive burns'. The post mortem report does not indicate the deceased to have suffered head injury. The disclosure statement pursuant to which an empty petrol bottle and match box was recovered, is of little consequence. He, therefore, urged for grant of bail to the applicant-Ranjit.

6. Learned APP and learned counsel for the intervenor would, on the other hand, submit that both the applicants had a strong motive to eliminate the deceased. There are witnesses to indicate the deceased and the applicant-Ranjit to have been in the company of each other just sometime before the deceased met with homicidal death. The statement of Swati, wife of the cousin of the applicant-Govind, indicates her to have had seen them going towards the field together. She also stated to have had seen the applicant – Govind to have followed them. The Call Details Record (C.D.R.) and the Whatsapp chat between the deceaed and Swati indicate that they were involved with each other. According to learned counsel, the chain of circumstances is, thus, complete, to indicate, prima facie, involvement of the applicant in the offence in question. Both of them, therefore, urged for rejection of the applications.

7. Considered the submissions advanced. Perused the FIR and the related papers.

8. The deceased – Rushikesh died of extensive burns suffered on intervening night of 19th and 20th December, 2021 in his own field. The post mortem report indicates the cause of death as `extensive burns'. The post mortem report does not indicate the deceased to have had suffered head injury. The Medical Officer has expressed inability to opine about the exact time of death of the deceased. The FIR has been lodged about a month after the alleged incident. It has been lodged by the Police Officer. The statements of the persons acquainted with the facts and circumstances of the case have been recorded either in February or March, i.e. after about two and half months of the incident. Both the applicants were close relatives of the deceased. The statement of Swati, wife of cousin brother of applicant-Govind, only suggests her to have had seen the applicant-Govind going towards the field of the deceased after both deceased and applicant-Ranjit together went towards the field. Same does not indicate that the trio were together. This is the only material against the applicant-Govind. This Court is, therefore, inclined to grant him bail.

9. Somewhat similar is the case about applicant-Ranjit. He was, admittedly, in the company of the deceased even until 10.00 p.m. He and the deceased had been to a hotel, wine shop and Pan stall to fetch food, liquor and Pan. Said fact had already been disclosed by the applicant-Ranjit to his sister-in-law – Vidya. It is reiterated that the Medial Officer was unable to give the exact time of death. It is, therefore, difficult to observe about the time gap between the applicant-Ranjit to have been in the company of the deceased and the time of his death.

10. Learned counsel for the applicant – Ranjit has relied on the decision of the Apex Court in the case of **Chandrapal Vs. State of Chhattisgarh (Earlier M.P.), 2002 Cri. L.J. 2401**, to submit that the Apex Court had observed that merely on the basis of the last seen theory in absence of any other link of circumstances, accused cannot be convicted.

11. This Court finds substance in the submission made by learned counsel for the applicant-Ranjit. On investigation, charge sheet has been filed. It will necessarily take time for commencement

and conclusion of the trial. The Court is, therefore, inclined to grant bail to applicant-Ranjit as well.

12. Hence, the following order:-

(i) Both the applications are allowed.

(ii) The applicants be released in connection with Crime No.28 of 2022 registered with M.I.D.C. Police Station, Dist. Latur, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with one surety each in the like amount.

(iii) The applicants shall not tamper with the prosecution evidence in any manner.

[R.G. AVACHAT, J.]

KBP