

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

**13 BAIL APPLICATION NO.1079 OF 2021
WITH APPLN/2090/2021 IN BA/1079/2021**

**ANIL DILIP KEDARE
VERSUS
THE STATE OF MAHARASHTRA**

Shri. C. C. Deshpande, Advocate for the applicant
Smt. R. P. Gour, APP for the respondent/State
Shri. Nitin N. Jagadale, Advocate for the informant

**CORAM : M. G. SEWLIKAR, J.
DATED : 17th January, 2022**

PER COURT :-

1. By this application, applicant is seeking his enlargement of bail in connection with Crime No. 0131 of 2021 for the offence punishable under Sections 302, 120(B), 201, 109 read with Section 34 of the Indian Penal Code registered with Bidkin Police Station, District Aurangabad.

2. Facts in brief are that the land gut No. 145 belonging to brother of the informant by the name of Kanta (since deceased) and gut No. 137 belonging to Prabhakar Kedare are adjacent to each other. There was some dispute on account of cartway between accused Raju Keadar, Anil @

Pappu Kedare and the present applicant.

3. It is further alleged in the FIR that on 2nd May, 2021 deceased Kanta was in the field since morning. On 3rd May, 2021 at 7.00 a.m. informant asked his nephew Laxman to search for deceased Kanta as he did not return for the whole day. A little while later, Laxman came back and informed that deceased Kanta was lying unconscious at Mhasoba bridge, Bramhagavhan Pump House Road. When the informant and others went to the spot, they found that deceased was lying there with injuries on his nose, face, neck, back, abdomen, chest etc. Accordingly, FIR came to be lodged against unknown person.

4. Learned counsel Shri. Deshpande for the applicant submits that there is no evidence worth the name against the applicant. He submits that charge-sheet is filed. Except the Call Detail Records (CDR), there is no evidence connecting the accused with the offence. Identification parade is also not held. He, therefore, seeks release of the

applicant on bail.

5. Learned APP Smt. Gour for the respondent/State and learned counsel Shri. Jagdale for the informant submit that identification parade was held on 23rd June, 2021 whereas applicant came to be arrested on 2nd July, 2021 and charge-sheet came to be filed on 28th July, 2021. Both of them submit that eye witnesses have stated that one unknown person was amongst the accused possessing belt and was assaulting the deceased with belt. They submit that belt without buckle was recovered at the instance of the applicant. They submit that Call Detail Records (CDR) show that applicant and accused Anil Ashok Kedare were in touch with each other till 9.10 p.m. Incident took place at around 9.30 p.m. They submitted that this incident shows that applicant was present at the spot of the incident. They further submit that witness Ganesh Kailas Chukade has stated that applicant had demanded Alto car of Ganesh Kailas Chukade and had said that he would return in the morning. However he returned it the same night which also

shows that immediately after the incident was over car was returned to the said Ganesh Kailas Chukade. They further submit that only on receipt of CA report it will be clear as to whether the buckle which was missing pertains to the belt which was recovered from the applicant. They submit that there was political rivalry between the applicant and the deceased. From the statement of wife of the deceased by the name of Shilabai Kanta Shinde it is revealed that applicant had tried to ram the vehicle on her elder brother-in-law by the name of Dnyandeo. They submit that considering this evidence it is clear that applicant was there at the spot of the incident and he had participated in the incident.

6. Admittedly, for the reasons best known to the Investigating Officer, identification parade is not held. It is true that witnesses have stated that one unknown person was beating the deceased by means of a belt. If identification parade had been held, there could have been evidence to indicate that applicant was that unknown person

who had assaulted the deceased by means of a belt. Since this evidence is not collected by the prosecution, there is a missing link.

7. So far as recovery is concerned memorandum under Section 27 shows that it was recovered from under the Neem tree. It is for an open space. It does not show that it was concealed under the leaves or it was concealed under the grass. Since it is from open space much evidentiary value cannot be attached to it. So far as Call Detail Record are concerned applicant and accused are shown to have been in touch with each other till 9.10 p.m. However by that itself it can not be said that applicant was present at the spot of the incident and participated in the assault. No extraordinary circumstance is brought on record to deny bail to the applicant. Learned APP Smt. Gour and learned counsel Shri. Jagdale submit that applicant has criminal antecedents. Criminal antecedents would be considered only when there is *prima facie* case against the accused.

8. At the stage learned counsel Shri. Jagdale for the informant submits that stringent conditions be imposed on the applicant. In this view of the matter, following order is passed.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount in connection with CR No. 0131 of 2021 under Sections 302, 120(B), 201, 109 read with Section 34 of the Indian Penal Code registered with Bidkin Police Station, Aurangabad, on condition that he shall not enter the Paithan Taluka till the conclusion of the trial.
3. Application is disposed of.
4. Pending application, if any, stands disposed of.
5. It is clarified that the observations made in the

above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp