

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

BAIL APPLICATION NO.1581 OF 2022

Vikas Venkatrao Dhane

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.S.J.Salunke, Advocate for applicant
Mr.V.S.Badakh, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 06, 2022**

ORDER :-

Leave to correct address of the applicant.

2. This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0278 of 2021 registered with Murud Police Station, Dist.Latur, for the offences punishable under Sections 302, 201, 363, and 364 read with Section 34 of Indian Penal Code.

3. Heard learned counsel appearing for the parties.

4. The First Information Report (FIR) has been lodged by the father of the deceased on 11.10.2021. It is averred therein that the

informant's son – Dagadu (deceased) went missing from the night of 06.10.2021. The informant's another son, Vipin (co-accused) had, therefore, lodged a missing person's complaint with the police station. Lateron, the dead body of deceased – Dagadu was found in Manjara river on 12.10.2021. The FIR has been lodged before the dead body was found. The informant alleged his another son – Vipin and his friend – Vikas (present applicant) to have had kidnapped the deceased – Dagadu. The post mortem report suggests that the deceased died of head injury. On investigation, charge sheet has been filed.

5. Learned counsel for the applicant would submit that the case is based on circumstantial evidence. There is very weak piece of evidence. The applicant has no motive to commit the crime. The fault of the applicant, is that he being a friend of the co-accused. He, therefore, urged for grant of bail to the applicant.

6. Learned APP would, on the other hand, submit that the applicant is very close friend of the co-accused – Vipin. The informant had direct suspicion against the applicant and the co-accused – Vipin and has, therefore, named them in the FIR before the dead body was found. Both applicant and the co-accused were

seen together taking dinner at the shop of witness – Mohd. Sadik on the previous night. There is also statement of one Dnyaneshwar, cousin of the deceased, indicating that both of them were together at the material time and the deceased left him to join the present applicant in response to his phone call. According to learned APP, the applicant assisted his friend in committing murder of the deceased. Friendship is motive for committing the offence in question. He, therefore, urged for rejection of the application.

7. Perused the FIR and the related papers of investigation. The case is based on circumstantial evidence. The FIR has been lodged by the father of the deceased, suspecting role of the applicant and the informant's another son, i.e. co-accused – Vipin, in commission of murder of Dagadu. What is against the present applicant is the statement of witness, Dnyaneshwar. According to Dnyaneshwar, both deceased and himself were together by little past 10.00 p.m. on 06.10.2021. The deceased had received a phone call of the present applicant and he, therefore, left to join the applicant. Thereafter, the deceased has not been seen. It is not known as to why, the Investigating Officer has not collected the calls detail record (CDR) of the cell phones of the deceased and that of

the present applicant. What had been stated by the deceased to Dnyaneshwar, that he received a phone call of the applicant and therefore, he left that place to join the applicant, may not be admissible in evidence, since that would not be covered by Section 32(1) of the Evidence Act.

8. There is no other material against the applicant to connect him with the offence in question. He is in jail for about one year. It will take time for commencement and conclusion of the trial. In view of the above, the application deserves to be allowed.

9. The observations made herein above are *prima facie* in nature, only for allowing the present application of bail. The trial Court shall not be influenced thereby.

10. Hence, the following order:-

(i) The application is allowed.

(ii) The applicant be released in connection with Crime No.0278 of 2021 registered with Murud Police Station, Dist.Latur, for the offences punishable under Sections 302, 201, 363, and 364 read with Section 34 of Indian Penal Code, on executing P.R. Bond in

the sum of Rs.1,00,000/- (Rupees One Lakh) with one surety in the like amount.

(iii) The applicant shall not tamper with the prosecution evidence.

[R.G. AVACHAT, J.]

KBP