

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

BAIL APPLICATION NO. 1474 OF 2021

Vinod Bhausahab Moghe

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Satej S. Jadhav Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 22nd DECEMBER 2021

DATE OF PRONOUNCING ORDER : 3rd JANUARY 2022

ORDER :

1. Present Application has been filed under Section 439 of the Code of Criminal Procedure by the accused, who has been arrested in connection with Crime No.50 of 2021 registered with Hasnabad Police Station, District-Jalna for the offence punishable under Section 302 of the Indian Penal Code.

2. Heard Mr. Jadhav, learned Advocate for the applicant and Mr. Phule, learned APP for the respondent – State.

3. Perusal of the First Information Report which has been lodged by one Sominath Shitole, who was serving as security personnel with Ganpati Mandir, would disclose that construction activity was going on through the said Temple Committee about a week prior to his First Information Report dated 26th April 2021. According to him, in all five to six persons were the labourers, out of whom four had returned but two had halted for further work. Out of them, one is Vinod Moghe i.e. present applicant and another was Kamaji Londhe – the deceased. On 25th April 2021 at about 10.00 p.m. when the informant resumed his night duty, he could find that present applicant and the deceased were consuming liquor on the first floor of the under construction building. After the informant had taken round at about 11.30 p.m. to 12.00 midnight, he could find that present applicant was disputing with the deceased on the count that his Mobile has been stolen by the deceased. Present applicant was assaulting the deceased and therefore, the informant intervened and separated them. He could see that the deceased had sustained severe injuries to the leg, but then he says that he

insisted that they should sleep separately. The informant asked the deceased as to how he has received injuries, at that time deceased disclosed that the applicant had assaulted him by iron rod. Informant states that the present applicant had then thrown the rod somewhere in the darkness, but applicant was giving threat to the informant that he should not intervene. After separating them, the informant left that place. He returned to the place around 5.00 a.m. and could not find the applicant there. He found deceased in unconscious state. However, he left the place by informing the said fact to another mason. After a while, when he could find that the deceased was not moving at all, he informed the said fact to the contractor and they shifted the deceased to Government Hospital, where he was declared dead. Therefore, the informant lodged the report against the present applicant.

4. Now, the investigation is over and charge-sheet is filed. Further custody of the applicant is not required for the purpose of investigation. The evidence that has been collected would show that the postmortem report shows that there were many surface wounds on the body of deceased and there was also a compound fracture of tibia. The probable cause of death is stated

as “due to head injury, compound fracture of left tibia and multiple injuries over body”.

5. It is to be noted from the First Information Report that the informant was disclosing the injuries those were seen by him to the leg of the deceased and he has not stated anything about injury to the head of the deceased. The evidence, therefore, at this *prima facie* stage, which is against the present applicant appears that he was lastly in the company of the deceased. Though the informant had separated them, they were on the same floor. The weapon allegedly used in the commission of crime has been recovered under Section 27 of the Indian Evidence Act. Therefore, with this kind of evidence, the applicant need not be asked to remain in the jail till the conclusion of trial, which is going to take a long period. Hence the following order:-

ORDER

- i) The Application stands allowed.
- ii) The Applicant - Vinod Bhausahab Moghe be released on bail in connection with Crime No.50 of 2021 registered with Hasnabad Police Station, District-Jalna for the offence punishable under Section 302 of the Indian Penal Code on PR Bond of

Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) The applicant shall comply with the requirements set out in Para No. 12 (1) to (6) of Chapter-I of the Criminal Manual, whichever are applicable.

iv) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

v) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI , J.]