

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

919 BAIL APPLICATION NO.1683 OF 2021

**KARTIK TOPLIYA @ SUPDYA JADHAV
VERSUS
THE STATE OF MAHARASHTRA**

Shri. Satej S. Jadhav, Advocate for the applicant
Shri. V. S. Badakh, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 11th January, 2022**

PER COURT :-

1. Heard.
2. By this application applicant is seeking enlargement on bail under Section 439 of the Code of Criminal Procedure in connection with Crime No. 0118 of 2020 registered with Muktainagar Police Station, District Jalgaon for the offences punishable under Sections 302, 120B, 201 of the Indian Penal Code and under Sections 4/25 of Arms Act.
3. Facts leading to this application can be succinctly stated as under,

(a) Deceased Dinkar Patil was a cousin of the informant. Deceased was in politics since last 20 years and was the President of Panchyat Samiti, Muktainagar. One Pramod Shaligram Patil used to be with the deceased. The said Pramod Shaligram Patil communicated to the informant on 17th June, 2020 at 5.15 p.m. that Pramod, Vijay Patil and the deceased were chatting till 2.30 a.m on 16th June, 2020 at Dwarka Kisan petrol pump. Pramod further communicated the informant that all of them slept in the ground in front of said petrol pump. At 5.00 a.m. when Pramod Patil woke up he found Dinkar in a pool of blood. Throat of Dinkar was slit by means of some sharp weapon. When the informant visited the spot of the incident, he found the deceased lying in a pool of blood. Therefore, he lodged the First Information Report on 17th June, 2020. On the basis of this First Information Report, offence under Section 302 of the Indian Penal Code came to be registered.

(b) It is further alleged that on 19th June, 2020 supplementary statement of the informant was recorded. In

the supplementary statement, informant stated that Vilas Mahajan and Tejrao Patil were not on good terms with deceased Dinkar. Tejrao Patil used to oppose deceased Dinkar in the social and political work. Accused Tejrao Patil and Vilas Mahajan were jealous of deceased Dinkar. On 2nd April, 2020 at 6.00 to 7.00 p.m., there was a quarrel between Dnyaneshwar Tambe, Ramrao Patil, Santosh Patil, Shivaji Patil, Ajabrao Patil and Nandabai Patil. In this quarrel, father of Vilas Mahajan by the name of Ramkrushna, sustained injury to his head. At that time, deceased Dinkar had convinced Vilas Mahajan owing to which, Vilas Mahajan did not lodge complaint against Santosh Patil, which did not go down well with Vilas Mahajan and Tejrao Patil. It is further alleged that Ramrao Patil had lodged complaint against Santosh and his relatives on the basis of which crime No. 57 of 2020 under Sections 324, 504, 506 read with Section 34 of the Indian Penal Code came to be registered. Deceased Dinkar had helped Santosh and his relatives to get bail. For this reason, suspicion was expressed by the informant that accused Tejrao Patil and

Vilas Mahajan had committed murder of the deceased.

(c) During investigation, it transpired that Vilas Mahajan and Tejrao Patil had given contract to the applicant for killing the deceased. It is further alleged that accused Tejrao Patil and Vilas Mahajan hatched a conspiracy to commit the murder of the deceased Dinkar. Accused Tejrao and Vilas Mahajan took help of accused Sayyad Shabbir and they agreed to pay Rs.2,50,000/- to Nilesh Gurchal and Supdya Jadhav (applicant) for committing murder of the deceased. It is further alleged on 17th June, 2020, during night time, Nilesh Gurchal, Supdya Jadhav (applicant) and Amol came on the motorcycle at the spot of the incident. Accused Sayyad Shabbir made sure that the deceased was there in the premises of the said petrol pump. Accused Nilesh Gurchal brought knife with him. Accused committed murder of the deceased by knife and fled. Accordingly, amount of Rs.2,50,000/- was paid to the applicant Nilesh Gurchal and Supdya Jadhav by applicant Nos. 1 and 2.

(d) After completion of investigation charge-sheet came to be filed.

3. I have heard Shri. Jadhav learned counsel for the applicant and Shri. Badakh learned APP for the respondent/State.

4. Learned counsel Shri. Jadhav submits that there is no evidence to connect the applicant with the offence. The only evidence which prosecution could collect against the accused is the confession of co-accused under Section 27 of the Evidence Act. This confessional statement is inadmissible in evidence.

5. Learned APP Shri. Badakh submits that there is cogent evidence to connect the applicant with the offence.

6. On perusal of the charge-sheet it is seen that memorandum under Section 27 of the Evidence Act of accused Nilesh Gurchal came to be recorded. During the recording of memorandum under Section 27 of the Evidence

Act name of the applicant came to be disclosed. Role of the applicant came to be disclosed from the memorandum of accused Nilesh Gurchal. Confession of co-accused is inadmissible in evidence unless it is given before the Magistrate. In the case at hand the confessional statement is before the police while recording memorandum under Section 27 of the Evidence Act. Therefore, this confessional statement is inadmissible in evidence. Even if this confessional statement is considered, fatal blow was not given by the applicant but it was given by Nilesh Gurchal. Learned APP Shri. Badakh also agrees that except this evidence prosecution could not collect any other evidence. In this view of the matter, I am inclined to release the applicant on bail. He has no criminal antecedents. Nothing is placed on record to show that applicant will not be available for trial. No extra ordinary circumstance is brought on record to deny bail to the applicant. In view of this following order is passed.

ORDER

1. Application is allowed.

2. Applicant be released on bail on his furnishing PR bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount in connection with CR No. 0118 of 2020 under Sections 302, 120B, 201 of the Indian Penal Code and under Sections 4/25 of Arms Act registered with Muktainagar Police Station, District Jalgaon, on condition that he shall not tamper the prosecution evidence. Applicant shall not leave the jurisdiction of the Court without prior permission of the Court. He shall provide his cell phone number to the concerned Police Station. In case of change in number, he shall provide new mobile number to the concerned Police Station.

3. Application is disposed of.

4. 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