

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 4177 OF 2021

Anna @ Madhukar s/o Balasaheb

Tupe ..Applicant

V/s.

The State of Maharashtra & Ors. ..Respondents

Mr. Abhishek Kulkarni for the Applicant.

Mrs. J.S. Lohokare, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

DATE : 28 MARCH 2022

P.C.

1. By this application, the Applicant (accused No.3) is seeking release on bail in Crime No. 421 of 2021 punishable under Section 302, 201 read with Section 34 of IPC registered with Bharati Vidyapith Police Station, District Pune.

2. The deceased Mohan Chondkar went missing on 18.05.2021 which was reported to the police by his wife Pooja Chondkar, on the basis of which the present crime came to be registered against unidentified persons. According to the prosecution, during the* course of the investigation, it was revealed that on 18.05.2021 at about 11.00 p.m., the deceased

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along with co-accused Vikas Chavan and Sachin Dakle had gone to a construction site of one Mukta Sonawane, for drinking liquor. There was a quarrel and altercation between the accused Vikas Chavan and the deceased Mohan, after which the co-accused Vikas Chavan and Sachin Dakle are alleged to have assaulted Mohan Chondkar on his head by bricks lying at the construction site resulting into death of Mohan Chodankar.

3. The allegation insofar as the present Applicant is concerned is that he had assisted the co-accused Vikas Chavan and Sachin Dakle in destroying the blood stained clothes by burning the same after obtaining petrol. There is also a statement by witness Kaushal Kadam who states that on 19.05.2021 at about 4.00 a.m., the Applicant had taken the co-accused to the said witness asking him to provide some accommodation. Kaushal Kadam claims that he arranged accommodation for three of them at Panchgani Holiday Home, where this witness along with present Applicant and two co-accused again drank liquor and during the course of their meeting at Holiday Home, the co-accused disclosed about having committed murder of Mohan Chondkar. In short, according to the prosecution, there is a extra judicial confession made by the co-accused to Kaushik Kadam, apart from a memorandum panchnama under Section 27 of the co-accused Vikas Chavan. Insofar as the memorandum panchnama is concerned, the co-accused has only offered to show the petrol

pump from where the petrol was purchased for burning the clothes.

4. I have heard the learned counsel for the parties. Perused record.

5. Prima facie it appears that the allegation insofar as the Applicant is concerned, is about destruction of the evidence and assisting the co-accused in the matter of obtaining the accommodation at Panchgani Holiday Home through the witness Kaushal Kadam.

6. This application was adjourned in order to enable the learned APP to go through the record and to make a statement as to whether there is any material to show that Applicant was party to the actual assault on the deceased.

7. The learned APP submitted that the only allegation is about destruction of the evidence in order to screen the offenders for which purpose a reference is made to the extra judicial confession of the co-accused to witness Kaushik Kadam and the memorandum panchnama.

8. I have considered the circumstances and the submissions made.

9. The evidence against the Applicant appears to be of the alleged extra judicial confession made by the co-accused to Kaushal Kadam and the discovery allegedly made by the co-accused under Section 27 of the Indian Evidence Act. The allegation against the applicant is essentially about destruction of the evidence thereby screening the offenders and not about the Applicant having taken part in the actual assault of the deceased. The memorandum panchnama under Section 27 of the Evidence Act is only about the co-accused showing the petrol pump from where the petrol was purchased for burning the clothes. There is a serious doubt whether the showing of the petrol pump in a public place can be said to be “fact discovered” within the meaning of Section 27 of the Evidence Act. The investigation is complete and the chargesheet is filed. The Applicant is in custody since 26.05.2021. In such circumstances, I find that the Applicant can be admitted to bail, subject to conditions.

10. Hence, the following order:

ORDER

i) The Applicant **Anna @ Madhukar s/o Balasaheb Tupe** be released on bail in Crime No. 421 of 2021 registered with Bharati Vidyapith Police Station, District Pune on executing a PR Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

ii) The Applicant shall undertake to remain present before the learned Sessions Judge, during the course of trial, unless exempted.

iii) The Applicant shall not directly or indirectly tamper with the prosecution evidence/witnesses.

iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.

v) Bail bonds to be furnished before the learned Magistrate.

vi) It is made clear that the observations herein are essentially of a prima facie nature and the learned Sessions Judge shall not be influenced by the same at the trial.

vii) Criminal bail application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)

(This order is corrected as per speaking to minutes of order dated 04.04.2022.)