



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2351 OF 2024

Dipak Prakash Wagh
Age 30 years, Occupation Labour,
R/o. Savde Pra. Cha.,
Taluka Dharangaon, District Jalgaon,
Maharashtra, India. ... Applicant

Versus

The State of Maharashtra
Through its Investigation Officer,
Dharangaon Police Station,
Taluka Dharangaon, District Jalgaon. ... Respondent

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Ms. Rani K. Agrawal, Advocate for the Applicant.
Mr. V. M. Jaware, APP for Respondent-State.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24.03.2025
Pronounced on : 25.03.2025

ORDER :

1. Applicant seeks his enlargement on regular bail on account of his arrest in crime no. 0321 of 2024 registered at Dharangaon Police Station, District Jalgaon for offences punishable under Sections 103, 115(2) of the Bharatiya Nyaya Sanhita (BNS).

2. Learned counsel submitted that, there is false implication. That, there is no eye witness. According to her, allegations are that, there was some minor quarrel between two brothers i.e. for lowering the volume of mobile. Informant is one of the three brothers. Present applicant, also a brother, is arrested on account of death of other brother. There was no motive or dispute on any count. Learned counsel submitted that deceased allegedly left house in drunken state. He was found injured and dead almost one kilometer away from the house. That, parents, who were in the house, also did not narrate any untoward incidence. That, nephew of deceased and accused himself speak about deceased returning home in the evening. Nobody has seen how deceased suffered head injury. According to her, being under influence of liquor, there is possibility of fall and suffering head injury. That, injury does not suggest use of any weapon or article. Nobody had seen applicant in the company of deceased, nor there was any quarrel in proximity to alleged occurrence.

3. Learned counsel further submitted that, investigation is over. Charge sheet is filed in November 2024. No further recovery or discovery is shown to be made and hence, according to her, no purpose would be achieved by further continued detention. She

pointed out that even case is not committed yet and when charge is itself not framed, it is her submission that, there is uncertainty over commencement of trial or its conclusion. As, according to her, applicant is ready to abide all and any conditions imposed by this Court, she seeks grant of regular bail.

4. Learned APP, who opposed the application, submitted that death is homicidal. There were stones lying at the spot. Clothes of applicant were found to be blood stained. Moreover, there is extra judicial confession to Sarpanch Gopal and his statement is recorded. According to him, as deceased was bothering family members after getting drunk, he was done to death in order to eliminate him.

5. In answer to above submission of learned APP that, clothes of applicant were blood stained, learned counsel hastened to add that applicant and parents had been to the spot where deceased was found lying in injured condition, and while shifting him to the hospital, clothes of all such family members got stains and as such, it is her such explanation for such condition of applicant's clothes. Moreover, she pointed out that, such clothes are seized after almost a week of incident.

6. Heard. Perused the FIR dated 11.08.2024 at the instance of one Gopal Wagh. He reported that, he and his family comprising of father, mother, grandmother, uncle and aunt, reside near each other, but have separate kitchen. That, his deceased brother Indal was addicted to liquor and therefore, his wife left with her children to go to her parents. That, on 11.08.2024, while he was sleeping, he heard his mother Kokilabai and paternal aunt Kamalbai crying loudly. So he woke up and went there and heard one Ashok Bhil saying that Indal is lying motionless in the vicinity of Bus Stand. Therefore, they all went, shifted Indal to the hospital, but he was declared dead and therefore, last rituals were performed. Informant claims that he learnt from his nephew Rahul that around 10.30 p.m., deceased came home drunk, demanded Rs.1,500/- from grandmother for drinking and when she refused, he scuffled with her, forcibly took the money and started playing song on mobile loudly. His other uncle i.e. present applicant woke up and requested him to lower the volume, resulting into quarrel followed by scuffle between them. Said Rahul further told that, due to the push given by present applicant, head of the deceased got banged on a corner resulting into bleeding injury. Thereafter, deceased left the house and shortly thereafter, it is claimed that, even present applicant left the house and returned in hurried condition around 01.00 p.m. Hence, above report.

7. Statement of Rahul Sonowane is recorded by police, but on 11.08.2024 and he reiterated about deceased coming home drunk, forcibly taking money from his grandmother, verbal exchange of words between present applicant and deceased, who are brothers. However, in the statement he has stated that due to scuffle, something hit the head of deceased and there was bleeding from his deceased uncle's head. This boy was directed to go to sleep, but he claims to have seen deceased uncle first going out of the house and shortly present applicant also leaving the house but alone returning back.

8. Thus, though brother has lodged report against another brother on the information received by above nephew, what exactly happened after both, deceased and applicant, left the house, is not getting clear. There is no statement showing both brothers in each other's company in the vicinity of Bus Stand where deceased was found to be lying. Thus, *prima facie* case seems to be based on circumstantial evidence. Now investigation is over and charge sheet is already filed. Learned APP has submitted that stones were found lying at the spot. Learned counsel for applicant expressed possibility of fall, deceased being drunk. Resultantly, when no further purpose is shown to be achieved

and as applicant is behind bars since more than seven months and also taking into account that there is nothing to indicate either case to be committed or charge being framed yet, relief as prayed deserves to be granted. Hence, I proceed to pass the following order:

ORDER

- I. The application is allowed.
- II. Applicant be released on bail in connection with Crime No. 0321 of 2024 registered at Dharangaon Police Station, District Jalgaon, on executing Personal Bond of Rs. 15,000/- with one surety in the like amount, on the following conditions:
 - [a] The applicant shall not tamper prosecution evidence.
 - [b] The applicant shall not enter the vicinity where informant and his family members reside, till conclusion of trial.
 - [c] The applicant shall not leave the area of jurisdiction of the concerned police station till conclusion of trial.
 - [d] The applicant shall attend the concerned police station twice in every week i.e. on every Monday and Thursday between 11.00 a.m. to 02.00 p.m. till committal of case and thereafter, shall regularly attend each and every effective date before the trial court.

[ABHAY S. WAGHWASE, J.]