

S.T.No.110/2021
State.Vrs.Sagar & Ors.

CNR No. MHAK01-001903-2021

ORDER BELOW EXH.59

[Passed on 9th day of September 2021]

1] Shri R. N. Wankhade, Ld. Counsel for the accused filed instant application u/s.439 of the Code of Criminal Procedure. It is submitted that, the informant lodged report with police station M.I.D.C., Akola alleging that, deceased Gopal Agrawal was proceeding on his motorcycle from his Stone Crusher to Akola city on motorcycle. Said motorcycle was ridden by witness Rajesh Bhange and Gopal Agrawal was pillion rider. At relevant time, the accused Sagar Prakash Kothale and Vijay Ambadas Rathod followed them by motorcycle. The said motorcycle was ridden by Sagar Prakash Kothale and Vijay Ambadas Rathod was pillion rider and he attempted to snatch the bag containing cash with Gopal Agrawal. Deceased Gopal made attempt to flea from the spot and he was later on found dead due to gun shot injury.

2] It is further submitted that, the name of applicant is nowhere mentioned in the report and FIR. Moreover, the accused Kamalkishor S/o. Prakash Kothale and Lakhan Vasanta Rathod were enlarged on bail vide order in Misc.Cri.A.No.51/2021 (by the Additional Sessions Judge Akola, Court No.3) and Misc.Cri.A.No.242/2021 (by the Additional Sessions Judge Akola, Court No.4) respectively. It is lastly submitted that, the present accused has no nexus with the present crime and the amount in question was already recovered during investigation from other accused. The applicant/accused is resident of Akola itself and

having movable and immovable property and he is ready to abide each and every condition for his enlargement on bail. Therefore, on the rule of parity, the applicant/accused be enlarged on bail.

3] Per contra, Shri R. S. Relkar, Ld. A.P.P. strongly resisted the instant application. It is submitted that, the Investigating Officer filed it's reply vide Exh.68 and contended that, the applicant/accused has direct nexus with the present crime. In fact, the applicant/accused made a phone call to accused No.1 and 2 and informed them that, deceased Gopal Agrawal left the place of Stone Crusher and having cash amount of Rs.1,50,000/- in the bag and on the said information, accused No.1 and 2 chased the deceased and snatched the bag and shot him dead. It is also submitted that, the C.D.R. of the applicant/accused was obtained by the I.O., wherein it reveals that the applicant/accused informed the accused No.1 and 2 that he was having cash amount in the bag and due to said information the incident taken place. It is lastly submitted that, in case applicant/accused be released on bail, there is every possibility of his absconding or hampering and tampering to the prosecution witnesses. Therefore the application deserves to be rejected.

4] Having heard Ld. Counsel for the applicant/accused and Ld. A.P.P., and having gone through the charge-sheet following points do arise for my determination and I have recorded my respective findings thereon with the reasons stated and discussed there under.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether applicant/accused is entitled for bail ?	In negative.
2	What order ?	As per order.

REASONS

5] Heard Shri R. N. Wankhade Ld. Counsel for the applicant/accused and Shri R. S. Relkar Ld. A.P.P., for State by giving full opportunity till their utmost satisfaction.

As To Point Nos.1 and 2:-

6] The applicant/accused has come up with specific case that, he had no nexus with the present crime and has been falsely implicated. It is the subsequent claim of the applicant/accused that, other two accused in the present crime were enlarged on bail and therefore, on the ground of parity, applicant/accused deserves to be enlarged on bail.

7] It is important to note that, the I.O. vide it's reply Exh.68 strongly resisted the instant application, it is contended that, the applicant/accused has direct nexus with accused No.1 and 2 in commission of the present offence. The applicant/accused made a phone call to accused No.1 and 2 and informed them that, deceased Gopal Agrawal left the place of Stone Crusher and he was having cash amount of Rs.1,50,000/-in the bag and on the basis of said information, the accused No.1 and 2 chased him and snatched the cash amount from deceased and caused his death by gun shot injury.

8] Apart from above, the charge-sheet as well as the say of the I.O. vide Exh.68 reveals that, during investigation the I.O. obtained the C.D.R. record of the mobile handset of the present applicant/accused as well as the accused No.1 and 2, from the said C.D.R. record, it is explicit

that, the applicant/accused has involved in commission of present offence, as such he made a phone call to the accused No.1 and 2 and informed that, deceased Gopal Agrawal was having cash amount of Rs.1,50,000/- in the bag and he was moving towards Akola. On the basis of said information, the accused No.1 and 2 chased him, snatched the bag with cash amount and caused death of deceased Gopal Agrawal by gun shot injury.

9] At the same time, the charge-sheet reveals that, there are statement of witnesses against the applicant/accused and memorandum panchanama regarding recovery of an amount of Rs.88,000/- from accused Vijay Ambadas Rathod and an amount of Rs.60,000/- was recovered from accused Sagar Prakash Kothale. In the light of this factual aspect, it appears strong prima-facie case against the applicant/accused regarding his involvement in the present crime. Moreover, the prosecution has specifically contended that, two accused were already enlarged on bail and therefore, in case applicant/accused be released on bail, he will hamper and tamper to the prosecution witnesses and possibility of his absconding cannot be ruled out.

10] Taking into account the submissions of Ld. A.P.P. and the available substance in the charge-sheet, in my considered opinion that there exist strong prima-facie case against the involvement of the applicant/accused in the present crime. Consequentially, the applicant/accused is not entitled to claim for bail on the ground of parity. With these observations, I answer my findings to point No.1 in negative and in response to point No.2, I proceed to pass the following order :

ORDER

(i) Application is hereby rejected.

(ii) Dictated in open Court.

Sd/-

Date:-09.09.2021.

[A. K. Sharma]
Additional Sessions Judge,
Akola.

- C E R T I F I C A T E -

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : L. S. Raniwal.

Court Name : District Judge-5, Akola.

Date : 09.09.2021.

Signed by Presiding

Officer on : 09.09.2021.

Uploaded on : 09.09.2021.

