

Session Trial No. 26/2024.

(State of Maharashtra Vs. Laxman Yaduba Kolpe+ 1)
(CNR No. MHAK05-000373 -2024.)

ORDER BELOW EXH.NO. 14

(Dated 07.08.2024)

This is an application for bail under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023. The applicant is arrayed as one of the accused person in Crime No.126/2024 registered with Akot Rural Police Station for offences punishable under Sections 120-B, 201, 302 of the Indian Penal Code, 1860.

Prosecution case is as under :

2. One Sawaliram Jayram Karande, resident of Chittalwadi, Tq. Telhara [residing at the time of incident at Bambarda, Tq. Akot] [hereinafter referred as to 'the informant'], lodged report at Akot Rural Police Station informing that, he had three sons and three daughters. His sons Jiva, Shiva and Anil and his wife have been residing together. His daughters have been married and they have been cohabiting at their respective matrimonial houses. His son Jiva was residing separately with his wife and his daughters Vaishnavi and Divya and son Yuvraj. Informant used to loiter in the vicinity to graze sheep. Jiva used to look after ships of Bada Gulab Bodhe and he was residing in the field of one Ambulkar at village Pimplod. Wife of Jiva was having love affair with Laxman Kolape. Santosh Koradkar was shepherd and he also used to reside at Bambarda. Son of the informant viz. Shiva got married on 30/03/2024. Jiva had come to attend the marriage on 27/03/2024 at 11-00 am. At that time, Jiva was possessing motorcycle belonging to Bada Gulab Bodhe. He collected marriage invitation cards and

proceeded to village Chittalwadi to distribute those cards. Thereafter, at 5-00 pm, the informant made phone calls to Jiva and asked him as to where he was. Thereupon, he said that, he was with Santosh Koradkar i.e. the present applicant. He also told that, he would return after purchasing clothes. After some time, the informant made phone call to Jiva. At that time, his cellphone was found to be switched off. Thereafter, at 8-00 pm, Tukaram Gulab Bodhe told the informant that, Jiva had fallen from motorcycle at Punda road. Thereupon the informant and his friends went by motorcycle towards Kawatha road. At about 8-30 pm, he found one motorcycle lying near village Kawatha and Jiva to have been fallen. He had sustained injuries around his neck and on his face. Blood was oozing from the nostrils of Jiva. He was lying near the field of Gajanan Dattatraya Bhamburkar. Police came there and took the dead body to Rural Hospital, Akot for post-mortem examination. It was revealed that wife of the deceased had illicit affair with Laxman Yaduba Kolape (accused No. 1 herein). Therefore, Laxman and this applicant committed murder of Jiva by strangulating him and by giving blow of sharp weapon. Upon the report being lodged, the investigation herein did swing into motion. The applicant came to be arrested on 12.04.2024. Now he is in judicial custody.

3. According to the applicant, he is falsely implicated in this case. He is permanent resident of village Rajura, Tq. Muktainagar, Dist. Jalgaon. His implication in the case is solely on the basis of suspicion. FIR does not indicate any eye witness to the incident. FIR indicates that, the informant came to know about the alleged illicit relations between wife of the deceased and accused No. 1. However, informant didn't lodge any report in that premise. Accordingly, FIR is based on

imaginary fact and it is concocted. Another accused is released on bail. Entire investigation has been completed. Trial would take its own time. There is no eye witness. There is huge unexplained delay in recording the statement of Tukaram Gulab Bode upon whose information, the informant lodged the FIR. Entire prosecution case is revealing around statement by the applicant/accused which was recorded under section 27 of the Indian Evidence Act. However, incriminating confessional portion therein is not admissible in evidence. Delay in lodging FIR is unexplained. The applicant/ accused is labour and he is the sole bread winner of his family. His pre-trial incarceration is not warranted. He is ready to abide by the conditions which may be imposed by this Court.

4. The State Prosecution resisted the application by submitting that, the offence is serious in nature. There is specific overt act directed against the applicant. The applicant has played role in commission of offence. If the applicant is released on bail, he would tamper with the evidence and would pressurize the witnesses. The prosecution evidence would be hampered thereby. The punishment for the alleged offence is death/life imprisonment. The statement of applicant/accused under section 27 of the Evidence Act, shows the confession. As such, it is prayed that, the application be rejected.

5. Heard Learned advocate for the applicant and Learned APP for the State Prosecution. Perused the available material.

6. Points for determination and findings thereon are as follows.

Sr.No.	POINTS	FINDINGS
1.	Does the applicant prove that, he has made out ground for bail u/S. 483 of BNSS?	Yes.
2.	Whether the applicant is entitled to bail as prayed for?	Yes.
3.	What order?	The application is allowed.

REASONS

AS TO POINT NOS.1 AND 2:

7. While appreciating merits of the present application, it needs be noted at the outset that, now the investigation has been completed. On apparent perusal of FIR, it may be gathered that, the informant was informed about the deceased being lying at Punda road by one Tukaram Gulab Bode. The statement of Tukaram Bode is recorded during the investigation. As per recitals in FIR, witness Tukaram was aware about the position of the deceased lying on Punda road on the date of incident itself. However, his statement has been recorded on 20.04.2024. The incident is dated 27.03.2024. This delay is quite significant. The same is not explained. Adverting to the statement of Tukaram Bode, as has been recorded on 20.04.2024, it is evident that, he projects that, he saw the applicant/accused and Santosh Koradkar fleeing away from the spot. However, this material fact is not appearing in FIR. It may be noted at the outset that, Tukaram who had witnessed the accused persons running away from the spot, ought to have lodged the FIR. It is not done so. Though it is informed to the informant, the FIR does not recite about the fact of fleeing away of the accused persons from the spot and it being witnessed by Tukaram. Thus, this material omission in

FIR and belated recording of statement of Tukaram hampers the prosecution case for the sake of bail.

8. The prosecution places reliance on statement of applicant/accused under section 27 of the Evidence Act. It is thereby tried to be culled out that, the applicant played substantial role in the commission of alleged offence. It is however, material to note that, the said portion which is confessional statement under section 27 of the Evidence Act, is not admissible in evidence. What is admissible under section 27 of the said Act is discovery of distinct fact throwing light on commission of offence. As such, mere recovery of weapon is relevant under section 27 and incriminating disclosure statement/confessional part is not relevant. Owing to this bar, aggravated role can not be attributed against the applicant merely on the basis of disclosure statement under section 27 of the Evidence Act.

9. It may be noted that, yet CA report is not received. The trial would take its own recourse and time. The informant and witnesses are from village Chhitalwadi, Tq. Telhara, Dist. Akola, whereas, applicant/accused is resident of village Rajura, Tq. Muktainagar, Dist. Jalgaon. Considering distance between the two places, possibility of tampering with the evidence or pressurizing the witnesses does not arise.

10. Having regard to the foregoing circumstances, it may be noted that, the applicant/accused is behind bars since 28.03.2024. Case is based on solely circumstantial evidence. There is no eye witness to the incident. The applicant does not have any criminal antecedents.

Accordingly, the applicant is entitled to bail subject to certain conditions. Accordingly, point Nos.1 and 2 are answered in the affirmative. Hence, the order :

ORDER

1. The application is allowed.
2. Applicant Laxman Yaduba Kolpe, in Crime No.126/2024 registered with Akot Rural Police Station for offences punishable under Sections 120-B, 201, 302 of the Indian Penal Code, 1860, be released on P.B. and S.B. of Rs.50,000/-, subject to following conditions-
 - a) The applicant shall not enter into the village Chitalwadi Taluka Telhara District Akola till completion of trial.
 - b) Bail before committal Court.

Place :Akot.
Date : 07/08/2024.

(B. M. Patil)
Additional Sessions Judge,
Akot.