

SESSIONS CASE NO.103/2018

Sandeep @ Vikki Dilip Velis

-versus-

The State of Maharashtra

Order Below Exh.4

Accused Sandip Velis has sought bail under Section 439 of Cr.P.C. in connection with Crime No.75/2018 registered with Devpur(w) police station for the offences punishable under Section 302,307,341,201, 120(B),109,143,147,148,149 IPC., Section4, 7/25 of Arms Act and Section 37(1)(3) r/w. 135 of The Bombay Police Act.

02. In short, facts of the case are as under;

This is a case of double murder on 08-06-2018. There were bickerings and disputes between two sides laid by accused Bajirao Pawar and deceased Raosaheb Patil. Close relatives of both of them were aware of the dispute and under currents. On 08-06-2018 informant Prashant Patil who is younger brother of deceased Raosaheb received information from Hitesh Devre that accused Rhushikesh Patil followed him. Hitesh proceeded to give medicines to deceased Raosaheb so informant Prashant had suspicion of such information of pursuit and he immediately started to meet his brother Raosaheb. He was accompanied by his other relatives.

03. When they were proceeding in front of the house of accused Jayraj Patil, they found that accused Gaurav, Jayraj, Rhushikesh, Sonu @ Vaibhav, Harshal @ Dadu, Bhupesh @ Bhupendra and Bhushan intercepted deceased Raosaheb, his son Vaibhav and Harish Shinde while they were proceeding in Scorpio vehicle. Some witnesses saw that aforesaid accused persons

committed brutal assault on Raosaheb and Vaibhav with deadly weapons like sword, scythe, Kukri and iron rod etc. The informant partly saw the incident. However the other witnesses saw the entire incident. The accused persons dealt number of blows on vital body parts of Raosaheb and his son Vaibhav who succumbed to the incident. Both were taken to the hospital for medical treatment. Vaibhav was declared dead on arrival and Raosaheb died after some time. Prashant registered FIR at about 00-58 hours on 09-06-2018.

04. Offence came to be registered at C.R.No.75/2018 and investigation commenced. Accused were arrested in due course. After completion of investigation chargesheet was submitted. After committal the case has been assigned to this Court. Accused Sandip was arrested on 29-06-2018.

05. The State has opposed bail application on various grounds by filing say. The first informant has opposed the bail application by filing his say. Heard both sides at length.

06. Ld.Adv.Shri.B.B.Waghmare for the accused has submitted that accused was not present on the spot. His alleged role is taking Rushikesh to Chopda. However, there is no evidence to show that accused Rushikesh and present accused were with each other. Shri.Waghmare has submitted that contents of statement recorded under Section 27 of Indian Evidence Act are not to be considered at the time of trial but, those can be considered while deciding bail application. There is no evidence to show that accused was involved in conspiracy. Panch witnesses of the memorandum panchanama of

the present accused are government servants. So there is no question of pressurizing panch witnesses. No purpose will be served by keeping the accused in jail. Remand reports of various accused persons do not show that role of present accused was disclosed and he provided weapons to main assailants. Statements of witnesses are not reliable and those are got up statements. Accused is permanent residents of Dhule. He is ready to abide by conditions of bail.

07. Ld.PP Shri.D.Y.Tawar has submitted that there is ample evidence showing that present accused provided weapons to main assailants. Furthermore, he took accused Rushikesh to Chopda on motorcycle. He has pointed out statements of various witnesses. It is not case of mere harboring but it is actual role in conspiracy. Further investigation is in progress due to recent arrest of three accused persons. CDR report shows that the accused was constantly in touch with other accused persons.

08. Ld. Advocate Shri.N.G.Dusane has submitted that motorcycle used to take away accused Rushikesh was seized at the instance of present accused. One bail application was not pressed earlier but it's copy is not produced. Further investigation is going on and it is likely to be adversely affected.

09. It is the case of brutal double murder. Brutality can be seen from the manner in which assault is committed and number of injuries sustained by both deceased. Deceased Raosaheb sustained 17 injuries on vital body parts and deceased Vaibhav sustained 16 injuries. The incident took place in broad day light at about 6-00pm

and in residential and commercial area. Shri.D.Y.Tawar has submitted that while considering the case of conspiracy the role of accused played towards accomplishment of common goal has to be considered. One has to keep in mind that direct evidence of conspiracy is seldom available. He has cited number of rulings wherein bail application of conspirator is in issue. He has relied on following citations.

1.Pratapbhai Hamirbhai Solanki v. State of Gujarat and Anr.2012 AIR SCW 5567.

2.Lokesh Singh v. State of U.P. & Anr. 2009 CRI.L.J. 369.

3.Gopikishan s/o. Madhukar Mujaria Vs. State of Maharashtra 2009 ALL MR (Cri) 756.

4.Panchanan Mishra Vs. Digambar Mishra & Ors. 2005 ALL MR (Cri) 1806 (S.C.)

5.Shri.Udaysinh Vilasrao Patil Vs. The State of Maharashtra 2014 ALL MR. (Cri)4245.

6.Smt.Fatima Dawood Merchant Vs. State of Maharashtra 2000 ALL MR. (Cri)1745.

7. Lt. Col.Prasad Shrikant Purohit Vs. State of Maharashtra 2017 ALL MR. (Cri)2374.

10. Taking further his submissions regarding conspiracy , Shri.Tavar has cited observations in Lt. Col.Prasad Shrikant Purohit's case (cited supra). It is observed that it is not necessary that all conspirators should agree to common purpose at same time. Some people may join lately and may not know about role of others. Still they are jointly liable for offence committed in execution of common purpose. It is further observed that an unlawful agreement is

gravamen of conspiracy. Such agreement may not be formal or express but inferable from declaration, acts and conduct of conspirators. It is a partnership in crime and hence, everything said or done by any of conspirators in execution or furtherance of common purpose is deemed to have been said, done or written by each of them.

11. The prosecution has come with the case of conspiracy. It is necessary to consider the role of present accused. From the statements of Brijesh Ahirrao, Sunil Mohite, Kiran Patil, Anil Wagh, Hitesh Gavhane and Jitendra Dusane it appears that present accused Sandip Velis and Harshal Patil brought the sword and other weapons and gave them to main assailants Jayraj and others just before the incident. Furthermore, from the statements of some of the aforesaid witnesses, it becomes clear that accused was seen in the company of Jayraj and others just after the incident. They all fled away on motorcycles. The statements also show that from Desh-Videsh Dabha the accused persons dispersed and accused Rushikesh and present accused Sandip went away on motorcycle which belongs to accused Harshal. Furthermore, CDR of the cell phone of accused Sandip show that he was constantly in touch with some of the accused persons from 06-06-2018 to 10-06-2018. All these pieces of evidence show that accused is prima facie part of conspiracy.

12. Recently three of the accused were arrested and further investigation is going on. Some new facts may be discovered. There are written complaints regarding threatenings given to the informant and other family members. Considering all these aspects, this is not

fit case to grant bail to the accused. In the result, I pass following order.

ORDER

The application is rejected.

Sd/-

[A.D.Kshirsagar]

Addl. Sessions Judge, Dhule.

Date:-23-10-2018

Certificate

I certify that the contents of this PDF file
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Name of the Steno : Nandkishor E.Kolhe
Name of the Court : Court of District Judge-3
& Addl. Sessions Judge, Dhule.
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Sd/-...
Stenographer