

Sessions Case No.1046/2023

State V/s. Laxman Rama Maragale & Ors.

ORDER BELOW EXH.04

Accused, namely Kisan Dhondiba Maragale, arrested 14.03.2023, and facing trial with other accused for offences punishable under sections 302, 307, 394, 341, 427, 504, 506 read with section 34 of the Indian Penal Code, filed present application to release him on bail.

2. Perused the application, replies filed by prosecution, by learned APP and available record.

3. Prosecution case is that, on 13.03.2023 at about 07.30 pm., informant Asif Mokhari and Narayan Gore (deceased) went by motorcycle, to the house of Dagadu Zore and Baban Zore, at village Temghar (Lavasa), Tq. Mulshi, Dist. Pune. They went there to purchase bullocks. Zore brothers agreed to sale three bullocks by fixing consideration and the consideration amount was to be paid once animals reached to house of the informant. A pick- up van was called at about 10.30 pm. to transport those cattles. Then the pick-up vehicle driven by other accused Laxman proceeded by different route with animals/ cattle. The informant and Narayan started proceeding on their motorcycle by different route and they were proceeding on Kangurumal to Lawasa road. At about 10.45 pm, they reached near a temple in village Kangurumal. Three accused obstructed their motorcycle. Narayan switched on torch of his

mobile and they saw those people. One of them asked the informant and Narayan as to why they came to purchase bullocks in their village. Then those three accused started beating the informant and the deceased by sticks and fist blows. The informant fell on ground and in a 'chari', and those three assailants continued to beat Narayan by sticks, though he was shouting. Those people also searched the informant, but he run away. It is alleged that Narayan died on the spot.

4. It is prosecution case that on 14.03.2022, dead body of deceased Narayan was found behind a temple of village Kangurumal, on Kangurumal to Murhakharab road. Police Patil of village Temghar saw the dead body when police patil of village Tailbail, of the informant, made inquiry with him about the informant and Narayan. In the previous night, the informant also made attempt make mobile call to Narayan, but his phone was switched off. He also made phone call to Dagadu in the morning at about 10.30 a.m. and narrated incident to him and made inquiry about Narayan. Then, the informant received information on mobile phone that Narayan was found in unconscious state and the informant was called at Paud Police Station. The informant went there and came to know that the Narayan is dead and his body was sent for postmortem to Rural hospital, Paud.

5. It is prosecution case, that other accused Laxman had knowledge that the informant and Narayan purchased cattles from

Zore, resident of his village. Thus, he was annoyed that people from other village purchased cattles from his village. Hence, he informed other accused to obstruct the informant and Narayan on their return way, to threaten them and to beat them. Thereafter, other three accused committed above-said crime, of committing murder of Narayan and attempt to commit murder of the informant. Present accused is one of those three accused.

6. Learned advocate for the accused argued that in the FIR, it is alleged that age of three assailants were between 25-30 years, but the age of accused is 23 years. As per FIR, the informant could have very short period to see assailants in night period, that too in the torch light of mobile phone and therefore, it is doubtful whether the informant can identify those assailants, including the present accused, in test identification parade conducted on 06.07.2023 i.e. after about period of 4 months of the incident and said test identification parade is not conducted as per Rules. According to him, no specific role is attributed to the present accused in alleged commission of crime and there is no recovery at the instance of present accused. He further argued that all family members are falsely implicated in this crime. The accused is local resident having immovable property and he will not abscond, but he will face the trial and abide conditions of bail, in case the application is allowed. Lastly, he submitted that the accused is in jail for a period of 10 months and his further detention in jail, is not necessary.

7. Learned APP argued that the informant has no grudge to falsely implicate accused in the crime. Only because, he is an eye witness to the incident, to whom also accused beat at the same incident and, as he has seen assailants in the torch light of mobile, he identified the present accused and other two accused, in test identification parade as assailants. According to him, on trifling ground as to why the informant and deceased Narayan visited the house of accused to purchase bullocks, all accused have committed serious crime of murder of Narayan. The available record shows that accused have knowledge that the informant and Narayan are coming on motorcycle and by stopping them, all accused assaulted them, in which Narayan died. Thus, according to him, there is sufficient material on record to show involvement of the accused in present crime.

8. The alleged role of the accused and material to support same, needs to be considered to decide the bail application. Besides, at the stage of deciding bail application, a mini trial can not be held. Also the nature, the manner in which the crime is committed and its seriousness, are also required to be considered while deciding the bail application.

9. The available record, particularly statement of Zore brothers revealed that they had called pick-up vehicle of other accused Laxman to transport cattle sold to the informant and Narayan. As per statement of Baban Zore, they have already asked

other accused Laxman about his pick-up vehicle for said work, before the informant and Narayan, came to their house. His statement further revealed that accused Laxman and he were proceeding with sold cattles and accused Laxman received mobile call of some one, he talked and then told him that his son Shankar (one of the accused) made phone call to him and informed that some one stopped the informant and Narayan at Kangurumal and they should not proceed further and then they did not proceed further.

10. According to the allegations in the FIR lodged by the informant, three assailants started beating him and Narayan and after he fell into a 'chari', those assailants searched; but he ran away and made mobile call to Narayan, and he could not contact him. The statements of other witnesses revealed that dead body of Narayan was seen at the place of incident in the morning of 14.03.2023. The informant also came to know about the same from his friend on mobile and he came to police station. The informant has identified three assailants in test identification parade conducted on 06.07.2023. There is nothing on record to show that the informant has any grudge to falsely implicate accused in the present crime, by identifying them in test identification parade, when admittedly they reside in different places. Even otherwise, the challenge to said test identification parade can be decided in trial and not at this stage.

11. In respect of holding test identification parade belatedly, learned advocate for the accused has relied on the **judgment dated 21.09.2018 in Bail Application No.1231 of 2018 (Sachin Dattatraya Darge Vs The State of Maharashtra)** of the **Hon'ble Bombay High Court**. It was a case of dacoity by using a Maruti Car and taking away amount of Rs.43,50,000/- from vehicle while carrying the cash to fill in bank ATMs. It is found that a motorcycle was recovered from the accused and the witnesses did not identify said bike and it was held that there is no material to show that said bike was used by the accused in commission of the crime. It is also held that the accused was identified in test identification parade after about one month after date of arrest of the accused and except CDR records, there is no other material to link the accused with the crime. The other accused was already released on bail. In all such facts, bail was granted to the accused.

12. In the present case, the record prima facie revealed that the present accused along with two accused assaulted the informant and Narayan in which Narayan died. Before that, they received information from other accused Laxman that the informant and Narayan are coming to the place of incident. The postmortem report of deceased Narayan shows that probable cause of death is 'death due to multiple blunt injuries'. Column no.17 thereof mentioned that 23 injuries were found on his body. Column no.19 and 20 mentioned about hemorrhages to brain and thorax. Even inquest panchanama shows that deceased Narayan was having

several injuries on body. Therefore, only because dangerous weapon like knife, etc. was not used by accused to assault the informant and Narayan, it cannot be held at this stage that accused do not have intention or knowledge to commit murder of Narayan, and such arguments advanced by Ld. Advocate for the accused cannot be accepted.

13. Several incriminating articles were recovered at the instance of other accused Laxman. Even, motorcycle of the informant was also recovered at his instance. But, only because no recovery is made at the instance of present accused, bail cannot be granted to him considering the nature of offence. The CDR of the mobile of all accused, prima facie revealed that they were in contact with each other at the relevant time.

14. Thus, all above-said facts of present case, prima facie shows that the accused is involved in serious crime i.e. murder of Narayan and attempt to commit murder of the informant. In such facts, the above-said case law is not applicable to grant bail to the accused. Therefore, discretion could not be used to release the accused on bail. Hence, following order is passed.

ORDER

Application is rejected.

Sd/-

(V. D. Nimbalkar)

Addl. Sessions Judge, Pune.

Date : 24/01/2023