

**IN THE COURT OF SESSIONS JUDGE, YAVATMAL**

(Presided over by Shri K.R.Pethkar)

S.T.No. 49/2019

State -Vs- Kiran

**Order Below Exh.25**

**[Passed on this 16<sup>th</sup> May, 2019]**

1.. Heard learned Advocate Shri Ali for the accused No.1 and learned A.P.P. Darda for the State. This is an application for regular bail under section 439 of Cr.P.C. in Crime No. 219/2018 under section 120-B r/w 302 r/w 34, registered in Yavatmal City Police Station on the basis of report of the first informant Anjali Mangulkar.

2.. The first informant states that her husband Sachin used to do business of sand alongwith Kiran Khadse and Sachin Mahalley. After some days dispute arose in the business between both of them. So her husband Sachin stopped to do the business of sand. One Babu Tayade from Gautam Nagar, Yavatmal used to be in the company of Kiran Khadse and Sachin Mahalley and they used to quarrel with her husband.

3.. On 29-12-1998 in the evening at 6.00 p.m. she herself, Sachin, two sons, mother-in-law, her elder sister Megha they all were in the house. In the evening at 6.15 p.m. Sachin had conversation on mobile phone with one Subhash Solanki.

On completion of conversation Sachin immediately went to Moha fata on the Bullet of his brother. Thereafter she herself alongwith two sons, mother-in-law and sister in the Bollero Jeep came at State Bank Chowk Yavatmal to eat Panipuri. At that time the first informant saw that near Moha Fata her husband was standing and Kiran Khadse, Sachin Tayade and Babu Mahalley were talking with him in a loud voice. After eating Panipuri they returned to their house. In the night at 9.15 p.m. after dinner she herself and her daughter Kasturi went out of house for walking. They heard shout when they reached near the house of Madankar. The first informant and her daughter went ahead and saw that her husband Sachin was lying in pool of blood and Bhima Khade and Gajanan Kumare were having sharp edged weapons in their hands and they were giving blows on the person of her husband. She shouted 'save-save'. Her husband died in the assault. Hence this report.

4.. The State has given say at Exh.32 stating that accused Mithun @ Bhima Khadse has given memorandum under section 27 of the Indian Evidence Act. The offence is of serious in nature. The applicant will tamper the prosecution evidence.

Hence, application for regular bail be rejected.

5.. Learned Advocate for the accused has submitted that the applicant/accused is behind the bar for more than three months. The parents of the applicant/accused are old aged persons and he is the only bread earner in his family. There is a delay of six hours in lodging the report and same is not explained by the first informant. The four wheeler vehicle is in the house of the informant and she did not went in the vehicle to lodge the report. The delay in lodging the report is fatal to the case of prosecution. The first informant is not an eye witness to the incident. The police did not record the statements of the people who are residing adjacent to the place of occurrence. The alleged incident took place in the night in the dark. The name of the accused persons is not mentioned in the station diary. The applicant/accused was not present on the spot at the time of incident as the statement of the witness Tulshiram shows that applicant was present in his house at the time of incident to collect his money. The recovery of weapon is not done from the hands of applicant under section 27 of the Indian Evidence Act. He has submitted that there is no propriety in keeping the

accused behind the bar as the investigation of the crime is completed. He has submitted that the applicant will not abscond and heavy surety be imposed on him while releasing him on bail. He has prayed that the applicant may kindly be regular bail.

6.. Learned A.P.P. has submitted that the offence is of serious in nature. The applicant has given memorandum to the police and recovery is done from him. The applicant has given confessional statement to the police, which shows that he has committed the offence. He has prayed that application for regular bail may kindly be rejected.

7.. In case of **Sanjay Chandra -Vs- C.B.I. 2011 All SCR 2930**, the Hon'ble Supreme Court has observed that :-

*“Therefore, in determining whether to grant bail both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in criminal case are to relieve the accused of imprisonment, to relive the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.”*

6.. In case of Pradip Shivaji Chinare -Vs- State of Maharashtra reported in 2013 All MR (Cri) 1371 the Hon'ble Bombay High Court observed that :-

*“Considering the nature of the injuries observed by the autopsy surgeon on the victim and the assault as described in the FIR, as also considering the fact that investigation is complete and charge-sheet has already been filed and the trial is not likely to take off.”*

7.. With due respect to above ratio laid down by Hon'ble Supreme Court and Bombay High Court, the same is not helpful to the applicant as in the present case major role is attributed to the applicant/accused. The report of the first informant specifically states that at about 9.15 p.m. she and her daughter Kasturi took dinner and came out of house for walking and reached near the house of Madankar and they heard the voice of shouting. She herself and Kasturi went ahead and saw that her husband was lying on a ground in a pool of blood and there were sharp edged weapons in the hands of Bhima Khade and Gajanan Kumare and by said weapons they were assaulting on the person of Sachin. The statement of daughter of the informant is similar to the report of the first informant. The report of the first informant and the statement of Kasturi shows that they are only eye witnesses to the incident.

8.. No doubt the statement of witness Tulshiram shows that on 29-12-2018 in the night at 10.00 p.m. he was in his house at Nagari, Babhulgaon, at that time Mithun @ Bhima Khade was present at his house alongwith his one unknown friend. They had came to his house on moped. He had purchased construction material on credit from Bhima Khade and he had paid the amount of Rs.5,000/- towards it to Bhima Khade. This is the subsequent conduct of the accused.

9.. The incident in question took place in the night at 9.15 p.m. and the statement of Tulshiram shows that applicant/accused Bhima Khade was present in his house. This fact clearly show that the applicant was not present in the house of Tulshiram at 9.15 p.m. when the incident took place. The distance between Chandore Nagar, Dhamangaon Road and Nagri Babhulgaon is approximately 20 kilometer and one can easily reach to Babhulgaon within half an hour on the moped. From above fact it is clear that the applicant was present on the spot at the time of incident. If at all there is any delay in lodging the report, the same will not come in the way of prosecution at the time of bail as the prosecution has opportunity to explain

delay in its evidence.

10..           The applicant has given memorandum to the police under section 27 of the Evidence Act and police has seized from him the clothes which he was wearing at the time of incident. The police had seized blue coloured jeans pant stained with blood of applicant which he was wearing at the time of incident. No doubt there is no recovery of weapon from the applicant, that does not mean his involvement in the crime is not remote. Prima-facie recovery of pant stained with blood is an incriminating factor against the applicant.

11..           The report of the first informant and statement of her daughter no where states that the people who were residing in the vicinity of spot were present on the spot. The reason behind said people who were not present on spot might have been taking dinner in their respective houses. The F.I.R. and statement of the witnesses prima-facie shows the involvement of the applicant in the offence. The major role is attributed to the applicant/accused. The possibility cannot be ruled out that the applicant will pressurize the first informant and her daughter if he is released on bail. The offence is of

serious in nature. The postmortem report shows as to how brutally the murder of Sachin was committed. The capital punishment is provided for the offence punishable under section 302 of I.P.C. In this background the applicant is not entitled for bail from the hands of this Court. Hence, I pass the following order.

**Order**

The application for regular bail at Exh.25 is rejected.

Dt/16-5-2019

[K.R.Pethkar]  
Sessions Judge,  
Yavatmal





**IN THE COURT OF SESSIONS JUDGE, YAVATMAL**

(Presided over by Shri K.R.Pethkar)

S.T.No. 49/2019

State -Vs- Kiran

**Order Below Exh.28**

**[Passed on this 16<sup>th</sup> May, 2019]**

1.. Heard learned Advocate Shri Chavan for the applicant and learned P.P. for the State. This is an application for the interim custody of mobile handset.

2.. The applicant Kiran states that he is the owner of Oppo mobile A33F Neo white handset. The serial number of the said mobile handset is 869990024255418. The applicant needs the said mobile hand set to remain in contact with his family members and for his business. The SIM card in the mobile handset has the booking Number of Gas Agency and it has become difficult for applicant to book the Gas. Hence the application for the interim custody of mobile hand set.

3.. The State by its say at Exh.33 state that the applicant has used the mobile handset in the offence for committing the murder of Sachin Mangulkar. The CDR Data of the mobile hand set disclose the conversation which took place between the applicant and the co-accused person. Hence, application for interim custody of the mobile handset be

rejected.

4.. The Cash Memo dt. 12-5-2016 issued by Jain Brothers shows that the applicant has purchased the mobile handset for an amount of Rs. 9,990/-. The house search panchanama dated 1-1-2019 shows that said mobile is seized from the house of applicant. The charge-sheet shows that the police has collected the CDR Data of the mobile handset in question. The offence is serious in nature. It appears that the mobile was used in the offence. Therefore, at this stage it is not proper to release the mobile to its owner. Hence, I pass the following order.

**Order**

The application (Exh.28) is hereby rejected.

Dt/16-5-2019

[K.R.Pethkar]  
Sessions Judge,  
Yavatmal





**IN THE COURT OF SESSIONS JUDGE, YAVATMAL**

(Presided over by Shri K.R.Pethkar)

S.T.No. 35/2018

State -Vs- Pawan Raut & others

Order Below Exh. 3

[Passed on this 12<sup>th</sup> Oct. 2018]

1.. Heard Shri Tagale, learned Advocate for the accused No.1 and Miss Darane, learned A.P.P. for the State.

2.. The case of the prosecution is that on 24-2-2018 at about 10.30 p.m. at Chintamani Nagar Bodhad, T.D.Yavatmal at the house of accused No.3, in furtherance of common intention present applicant/accused Pavan alongwith accused Sidharth and absconding accused Nikhil Babu Chaudhari in furtherance of their common intention agreed with each other to commit murder of Anil Bhimrao Gajbhiye as per the instructions of accused No.3 Kunda Motiram Kumbhare, as deceased Anil Bhimrao Gajbhiye was having illicit relations with accused No.3 Kunda Kumbhare and he was residing there with accused No.3 Kunda. The quarrel used to took place oftenly between accused No.3 Kunda and deceased Anil on account of money. Accused No.3 Kunda obtained loan from Vidarbha Kokan Bank for construction of house and on 24-2-2018 said amount was agreed to be paid to accused No.3 Kunda and as accused No.3 Kunda came to know that deceased Anil will forcibly took said amount from her and as accused No.3 Kunda was under fear that in case he would not give said amount of

deceased Anil, he may kill her. Hence, accused No.3 Kunda hatched conspiracy to kill Anil and accordingly called her son in

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law i.e. present accused Pavan from Nagpur, who was also enraged upon deceased Anil as Anil had given blow on the stomach of his wife, who was pregnant and thereby she was aborted. Hence present accused Pavan alongwith accused No.2 Sidharth and absconding accused Nikhil arrived at the house of accused No.3 Kunda and by agreement of commission of above said act and by criminal conspiracy hatched amongst them committed murder of Anil Bhimrao Gajbhiye viz. accused No. 3 Kunda thrown chilly powder upon Anil, present accused Pavan assaulted Anil on his head by stump of spade and accused No.2 Sidharth assaulted Anil on his head by bamboo stick and rafter of wooden cot, intentionally or knowingly caused his death.

3.. The State has given say at Exh.5 stating that the charge-sheet shows prima-facie evidence against the applicant/accused. The offence is of serious nature. Capital punishment is provided under section 302 of I.P.C. Hence, the application for bail be rejected.

4.. The learned Advocate for the accused has submitted that the applicant is arrested in the crime only on suspicion. The informant used to quarrel with her deceased husband on the count that deceased had love affair with accused Kunda. The deceased left company of the informant and went to reside Bodad since last two years. The applicant is not directly concerned with the informant nor the accused. There are no eye witnesses to the alleged incident. The applicant has

no criminal antecedents. The applicant was arrested on 27-2-2018. The charge-sheet is filed and case is committed to the

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Court of Sessions and it will take its own time to begin the trial. The applicant be released on bail.

5.. The learned A.P.P. Miss Darne submitted that offence is serious in nature. The applicant will tamper the prosecution witnesses. Hence, the application for bail be rejected.

6.. In case of Laxman Irappa Hatti and another -Vs- State of Maharashtra, reported in 2004 All MR (Cri) 3073, the Hon'ble Bombay High Court has observed that :-

*“However, in my opinion, it is not open for the Court to hold that filing of the charge-sheet is not a substantive change of circumstances and refuse to enter into merits of the case.”*

7.. Perused the papers of Sessions Trial. The accused Pawan has given memorandum to the police and in persuance to it he has produced handle of spear. The police papers shows that there are no eye witnesses to the alleged incident. The case is based on circumstantial evidence. The alleged incident took place in the night of 24-2-2018. The accused is behind the bar since then. Looking to the facts and circumstances of the case, it is not desirable to further detain the accused behind the bar. The accused can be released on bail by

imposing stringent conditions. Hence, I pass the following order.

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**Order**

Application is hereby allowed.

The applicant/accused Pawan s/o Kailas Raut be released on his executing P.R. bond of Rs. 30,000/- with one solvent surety in the like amount, on the condition that he shall not tamper the prosecution witnesses and attend the trial regularly.

Dt/12-10-2018

[K.R.Pethkar]  
Sessions Judge,  
Yavatmal