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SESSIONS CASE NO.483/2024

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ORDER BELOW EXH.5

(State of Maharashtra Vs. Sagar Vilas Nalawade)

01. Accused No.3 is seeking regular bail under Section 439 of Cr.PC. in respect of Crime No.10/2024 registered with Vita Police Station for the offences punishable under Sections 302, 307 r.w.34 of Indian Penal Code.

Arguments :

02. Ld.Adv.M.S.Shanbag for the accused No.3 submitted that, incident occurred on 31.12.2023 FIR is lodged on 08.01.2024. There is delay of 8 days in lodging FIR and prosecution got chance to improve their case. Accordingly, prosecution falsely implicated present accused No.3 in the crime. He submitted that in the complaint it is alleged that Abhijit Aute informed complainant about incident on 31.12.2023 at about 12.30 p.m. However, Abhijit Aute in his statement recorded by police stated that he went to spot of incident at about 12.45 p.m. This is material contradiction. It is mentioned in Medico Legal Form dt. 31.12.2023 that deceased was brought to the hospital by Sambhaji. However, his statement was not recorded by Investigating Officer. Two letters issued by Investigating Officer to Medical Officer with respect to whether deceased was in a condition to record his statement. Therein Medical Officer opined that deceased was not in a position to give statement. He

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submitted that PHC Shri Gavade also stated that from 31.12.2023 to 08.01.2024 no one relative of deceased was ready to lodge complaint or inform about how incident occurred. It itself shows that complaint is lodged to implicate the accused.

03. Advocate for accused No.3 further submitted that, in inquest panchanama column No.10 it is mentioned that head of deceased was operated. Cause of death mentioned in the Post Mortem report was Intra-cranial bleed due to head injury. However, there are no external injuries on the person of deceased. It itself shows that accused No.3 has not caused any injury which could have caused death of deceased. The deceased chronic alcoholic and said fact is mentioned in the notes of patient by Medical Officer. Deceased died due to cardiac arrest as mentioned in the letter issued by Bharati Hospital dt. 08.01.2024. The alleged incident occurred in the heat of passion in sudden heat and accused has not taken any benefit. It does not comes within the definition under section 300 of IPC but comes within 304 Part II of IPC. Nothing is recovered from accused No.3. So bail be granted to the accused. So considering punishment provided for the offence, accused No.3 having not having antecedent and more particularly accused No.4 has been granted anticipatory bail, accused No.3 also needs to be released on bail. To support his submission he relied on three case laws which are discussed below.

04. Whereas Ld.AGP Shri S.R.Hingmire submitted that though there is delay, but it is explained in the complaint itself

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because complainant was having belief that deceased will become conscious and will lodge the complaint but he did not become conscious and died. There are number of eye witnesses to the incident who specifically stated that accused No.3 assaulted by stick on the head and other body parts of deceased. The death of deceased was due to head injury as mentioned in P.M.Report. There is discovery of fact while accused No.2 was in police custody and accordingly recovery of weapon used in the crime. The offence under section 302 of IPC is made out against accused No.3 and application be rejected.

05. Whereas Ld.Adv.Shri D.V. Shinde for complainant submitted that, there is ocular evidence supported by medical evidence, the delay is also explained and so application be rejected.

FIR in brief :-

06. In the present case FIR is lodged on 08.01.2024. It is alleged in the complaint that on 31.12.2023 at about 12.30 p.m. while complainant was at Kolhapur, Abhijit Aute informed him on the phone that his maternal uncle namely, Ravindra Nalawade i.e. deceased has been assaulted. He told him to take his maternal uncle Ravindra to hospital at Vita. Thereafter, complainant made phone call to his maternal uncle who told him that accused Nos.1 to 3 assaulted him by stick and accused No.4 assaulted him by chappal. From there, deceased was initially admitted in the Rural Hospital, Vita. Thereafter, shifted to Mission Hospital, Miraj and

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from there again shifted to Bharati Hospital, Sangli. Thereafter, complainant made inquiry with Jaykar whereon he told him that, on 31.12.2023 at about 11.30 p.m. accused Nos.1 to 3 assaulted on the person of deceased Ravindra and accused No.4 assaulted by Chappal.

07. On the basis of complaint initially crime was registered under section 307 r.w. 34 of IPC. Thereafter, deceased died and so section 302 of IPC has been added to the crime.

08. There is no dispute that Ravindra died during treatment. Post Mortem Report of deceased Ravindra shows that in column No.18 deceased sustained following injuries.

1. Sub-cut bleed left frontal region under the scalp.
2. Bur hole at left frontal region on skull.
3. Intra-ventricle bleed over brain.

09. The cause of death of deceased as per post mortem report was intra-cranial bleed due to head injury. On the basis of post mortem report it appears that death of deceased was homicidal one and not natural one.

Role attributed to accused No.3 :-

10. No doubt complainant is not eye witness of the incident. However, there are number of eye witnesses who saw alleged incident. As per statements of eye witnesses the role attributed to accused No.3 in the alleged incident was that he assaulted by stick on the head and other body parts of deceased.

11. The Medical Officer in his notes of patient has

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mentioned that deceased was patient of chronic alcoholic. However, there is no material on record to shows that death of deceased was due to reason that he was chronic alcoholic. Another circumstance relied upon by the accused is about letter issued by Bharati Hospital wherein it is mentioned that on 08.01.2024 at about 8.30 p.m. patient suddenly went to cardiac arrest and it caused death of deceased. But in the Post Mortem report of deceased the doctor has specifically mentioned that cause of death is due to head injury. Eye witnesses specifically attributed role to accused No.3 that he assaulted by stick on the head of deceased. Column No.18 of post mortem shows that injuries sustained by deceased on his head.

12. In the case of Chaman S/o.Shri Gajraj Goud Vs. State of Madhya Pradesh, in Misc.Ri.Case No.8848 of 2024 decided on 01.03.2024 M.P relied upon by the advocate of accused No.3 the facts were that incident occurred in sudden fit of anger. Doctor did not find any external injury over body neither there was any fracture. In the post mortem cause of death was due to intracranial bleeding. However, in the present case in column No.18 of Post Mortem report shows external injuries on the head of deceased. Moreover, in the post mortem report it is specifically mentioned that, death of deceased caused due to head injury. So the case law relied upon is not applicable to the case in hand due to different facts and circumstances.

13. In the case of Pancham Vishwakarma Vs. State of U.P

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in Bail No.4996 of 2021 decided on 19.05.2021 U.P the facts were that in complaint it was not specifically mentioned what was in the arm of applicant. No prosecution witness had stated as to what weapon was holding by applicant by which injury caused by deceased. So considering those facts and circumstances bail was granted to applicant. In the case of Arun Kumar @ Annu Sarpanch Vs. State of U.P in Cri.Misc.Bail.Appln.No. 3623 of 2021 decided on 23.07.2021 the facts were that there were general allegations against the applicant and no specific role assigned to him in the alleged incident. So considering the said aspect bail was granted to him.

14. In the present case as discussed above, eye witnesses have specifically assigned role of accused No.3 assaulted by stick on the head of deceased. Death of deceased was caused due to head injury as per post mortem report.

15. One of the argument advanced by advocate for accused No.3 is that case of accused No.3 comes within exception 4 of section 300 of IPC as the act was committed without any premeditation in a sudden fight in the heat of passion upon a sudden quarrel. However, on the basis of material available on record prima facie it does not appear that, incident occurred without premeditation in a sudden fight in the heat of anger.

16. This Court granted anticipatory bail to accused No.4 because only role attributed to him was assault by chappal. Except this no other role was attributed to her. The role attributed to

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present accused No.3 is altogether different one. Accused No.3 took active participation in the crime and so parity is not applicable.

17. So considering the role attributed to accused No.3, offence under section 302 of IPC made out, punishment provided for the offence, if the bail is granted, then there is possibility of hampering and tampering of prosecution evidence. Hence, following order is passed.

ORDER

1] Application is rejected.

Vita
Date : 13-05-2024

(D.Y.GAUD)
Addl. Sessions Judge,
Vita.

CERTIFICATE

I affirm that, the contents of this PDF File Order are same, word to word, as per the original order.

Name of Stenographer	S.V.Agnihotri, Stenographer Grade - I
Name of Court	District Judge-1 & Addl Sessions Judge,Vita
Date of Order	13.05.2024
Judgment / order signed by the Presiding Officer	13.05.2024
Order uploaded on	14.05.2024