

Misc. Cri. Appln. No.148/2024

Swapnil vs State

ORDER BELOW Exh.1.

(Passed on 28.03.2024)

By way of the present application accused-applicant Swapnil Chandrakant Kashikar is seeking regular bail in Crime No.84/2024, registered with Police Station, Ramnagar, Chandrapur under sections 302, 143, 147, 148, 149 of IPC and r/w section 135 of the Maharashtra Police Act.

2. In short, a few facts necessary for disposal of the present bail application can be stated as under:

(i) The FIR dated 26.01.2024 has been lodged by informant Nilesh Bhagwan Hiwrale. He is said to be uncle of deceased Shiva Wazarkar. It is alleged that the deceased was working with accused-applicant as a contractor and at the relevant time accused-applicant had purchased a Bullet motorcycle MH-34-1500 in the name of deceased Shiva. It is further alleged that disputes ensued in between deceased and accused-applicant on count of money and as such they stopped to work together. It is further alleged that accused-applicant did not pay within time EMI of the Bullet motorcycle. It is further alleged that co-accused Himanshu Kumare is working with accused-applicant and said Himanshu and the deceased had discord.

(ii) The incident in question is dated 25.01.2024. It is alleged that on that day at 8.00 p.m. informant Nilesh, the

deceased and other friends of deceased viz. Sahil Sidam, Samir Sheikh, Nasir Sheikh, Raj Sopar were chitchatting near Law College. At that point of time deceased Shiva received a phone call from co-accused Himanshu. It is further alleged that co-accused Himanshu started abusing deceased Shiva over his father. It is further alleged that co-accused Himanshu called deceased Shiva in-front of office of accused-applicant situate at Chaware layout in RY Saffire Apartment. It is further alleged that informant Nilesh, deceased and his friends Samir Sheikh went together. It is alleged that co-accused Himanshu, accused-applicant and other co-accused Rizwan Pathan, Sumit Date, Sahil Sayyad, Rohit Pitalkar, Ansar Khan, Nazir Sheikh and Chaitanya Askar were present and they encircled deceased Shiva. It is further alleged that co-accused Himanshu dealt knife blows at stomach of deceased Shiva. It is further alleged that the co-accused beat the deceased by means of kick blows. He was removed to Yashodhan hospital where it was told by doctor that Shiva is dead. Accordingly informant at 2.28 hours lodged the FIR with Ramnagar Police Station, Chandrapur. Accused-applicant came to be arrested at 5.21 hours of 26.01.2024. Presently he is in jail.

3. Gravamen of allegation against accused-applicant is that he had grudge against the deceased as the deceased had stopped working with him. Deceased had independently

started work of supply of building material. A criminal conspiracy was hatched by accused-applicant, co-accused Himanshu and other co-accused for eliminating deceased Shiva. It is alleged that accused-applicant was a party to such a criminal conspiracy. It is further alleged that in all 8 weapons came to be seized at the instance of accused-applicant.

4. In this application it is main contention of the accused-applicant that he has been falsely implicated on count of political rivalry. It is contended that there is no prima facie strong evidence against accused-applicant. It is contended that accused-applicant had no intention to kill deceased Shiva. It is further contended that accused-applicant is a businessman running business of sand transportation. It is contended that if the accused-applicant is not granted bail his business will be adversely affected.

5. Prosecution has opposed the application by filing its say (Exh.5). It is contended that there is prima facie material to show that accused-applicant is involved in the alleged offence. It is also contended that the offence in question is of serious nature. It is also contended that if the accused-applicant is granted bail there is possibility of threatening to prosecution witnesses. It is further contended that the accused-applicant has criminal background having 10 other crimes at his discredit.

6. The informant has appeared and opposed the bail application by his reply vide Exh.8.

7. I have heard both the sides and Investigating Officer. I have perused the case diary.

8. During course of hearing the learned counsel for accused-applicant made a submission that the accused-applicant has been falsely implicated on political rivalry. A submission was made that accused-applicant was neither aware about the incident in question nor he is involved in any way in the incident in question. It was further submitted that police have cooked an afterthought story of criminal conspiracy. A submission was made that accused-applicant had not played any role in the incident of killing of deceased Shiva. It was submitted that the deceased had criminal background. A submission was made that police have falsely implanted recovery of weapons at the instance of accused-applicant. It was further submitted that accused-applicant has co-operated in investigation. Therefore, the accused-applicant is entitled for bail.

9. On the other hand the learned APP made a submission that the offence in question is of serious nature and the accused-applicant is having criminal antecedents being a sand Mafia. It was further submitted that there is prima facie strong material against accused-applicant.

10. Investigating Officer opposed the bail application. He

made a submission that there is strong prima facie material against accused-applicant. He also submitted that if the accused-applicant is granted bail, there is possibility of misuse of bail.

11. Having taken stock of the above submissions, I shall appreciate the question of grant of bail in this case.

At the very outset, it may be noted that it is well settled that bail is rule and jail is an exception. Be it noted that the alleged offence is punishable with death sentence or imprisonment for life. This is an indicative of the fact that gravity of the alleged offence is at a very higher side. It is also pertinent to note that a young boy has been killed in the alleged offence.

12. Under the above backdrop, I shall prima facie appreciate the role attributed to accused-applicant. Prima facie it appears that deceased was working with accused-applicant and the later has purchased a bullet motorcycle in the name of the deceased. Prima facie it appears that there was discord in between accused-applicant and the deceased and as such the deceased had stopped working together with accused-applicant. It also appears that the deceased had started independent work of supply of building material. It may be pointed out that prosecution has invoked section 120-B of IPC with an allegation that a criminal conspiracy was hatched by accused-applicant and the co-accused to eliminate deceased

Shiva. There is statement of a witness Aditya to show that such a criminal conspiracy was hatched. No doubt, the question of criminal conspiracy shall have to be appreciated during the course of trial. However, at this prima facie stage it appears that there is involvement of accused-applicant.

13. From FIR and the material in the case diary prima facie it appears that co-accused Himanshu dealt fatal knife blow to deceased Shiva at his stomach. Post mortem examination report shows the cause of death was “due to shock and hemorrhage due to stab injuries.” Prima facie from the material on record it appears that the accused-applicant was present at the relevant time. It is important to note that there is a reasonable nexus in between accused-applicant and co-accused Himanshu. They are working together in field of sand transportation. A perusal of the case diary would show that prosecution has invoked section 120-B of IPC. It also appears prima facie that accused-applicant is involved in the alleged offence. Having said so, I find that at this stage there is sufficient prima facie material to show that accused-applicant is guilty of the alleged offences.

14. From case diary it appears that investigation is in progress and yet charge-sheet is not filed. It also appears that investigation is at crucial stage. Question of grant of bail in the present case shall also have to be viewed from another angle of nature of the crime. It appears that a young boy has

been killed in the alleged offence. No doubt, it appears that the deceased also had criminal background. However, this circumstance at this stage cannot be put in favour of accused-applicant. This circumstance is a matter of evidence that shall have to be appreciated at the time of final hearing. In any case the fact that remains on record that gravity of the alleged offence is at a very higher side. As indicated above, the alleged offences are punishable either with death sentence or imprisonment for life.

15. It is pertinent to point out that Investigating Officer has reported in his say that as many as 10 crimes are at the discredit of accused-applicant. Prima facie it appears that the accused-applicant has criminal antecedents. Under such premise, I find that possibility of misuse of bail if granted to accused-applicant is at a very higher side. Considering such a fact and situation and taking a over all prima facie view of the matter, I do not find that this can be a deserving case to grant bail to accused-applicant. Hence the following order is passed:

Order

Application (Exh.1) stands rejected.

Date : 28.03.2024.

(Girish G. Bhalchandra)
Addl. Sessions Judge-2,
Chandrapur.