

MHJN010024912023

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-3, JALNA****SESSIONS CASE No.235 OF 2023**

The State of Maharashtra .... Complainant

Vs.

Shankar Sanjay Pawar &amp; Anr. .... Accused/applicant

Appearance:

Shri.D.R.Sadar, the learned counsel for the applicant/accused  
Shri.B.V.Ingle, the learned In-charge D.G.P. for the State**ORDER PASSED BELOW EXH.14**

. This regular bail application by taking recourse of Section 439 of the Criminal Procedure Code ( in short, "Cr.P.C.") is preferred by the applicant/accused Shankar Sanjay Pawar, who stands prosecuted for an offences punishable under Sections 302,504 read with Section 34 of the Indian Penal Code (in short, "I.P.C.").

02. It is a matter of record that vide Exh.9, the charge is already framed in the present case and the accused has pleaded

not guilty and the stage of the case is awaiting muddemal and evidence. I have perused the bail application. The prosecution has strongly opposed the bail application by filing say vide Exh.30. I have heard learned advocate Shri.D.R.Sadar for the applicant/accused and learned In-charge D.G.P. Shri.B.V.Ingle for the State.

03. It is submitted by the learned advocate for the applicant/accused that the co-accused Swapnil Mule has been released on regular bail by the Hon'ble Bombay High Court, Bench at Aurangabad vide order in Bail Application no.1558 of 2023 on 21<sup>st</sup> of September, 2023 and he has argued for grounds of parity. On perusal of the record specifically the F.I.R. as well as statements of the witnesses on record, the investigation was set into motion on the basis of the information given by one Suresh Ramrao Shelke who alleges that present applicant/accused was stalking his nephew and niece. He had intercepted accused Shankar and asked him to desist from such activity. However, present applicant/accused took out a knife and inflicted a blow on Narayan/brother of informant. The co-accused later-on came on the spot and he has used the weapon stick and assaulted deceased.

04. On perusal of the charge-sheet, statements of four eye-witnesses are recorded under Section 164 of Cr.P.C. These

witnesses are, Suresh Ramrao Shelke, Sandip Trimbak Shelke, Ganesh Bhanudas Shelke and Gajanan Baliram Shelke, who are the eye-witnesses and who had seen the present applicant/accused while assaulting the deceased by means of knife. On perusal of the postmortem examination report, there are three stab injuries and the said postmortem examination report suggests that the death of deceased was caused by hemorrhagic shock due to stab injury to chest and abdomen. Statements of these four witnesses shows the active role of the accused. The knife is also shown to be seized at the instance of accused. Prima-facie case is made-out and the ground of parity is not available to the present applicant/accused because the co-accused Swapnil Mule has shown to be used the stick and the death is not caused by any of the injuries due to the use of stick. In the present case, the charge is already framed and the trial is expedited. The inquest panchnama shows the corresponding injuries on chest and abdomen.

05. While pressing for this application, the learned advocate for the applicant/accused has placed reliance on following cases:

- 1) **Vinod Bhavarlal Mohata Vs. State of Maharashtra [2010 ALL MR (Cri) 1793]**
- 2) **Toran Yadav & Anr. Vs. State of U.P. [2010 ALL MR (Cri) Journal 17]**

3) **Shri.Tarkeshwar Goraknath Pandey Vs.  
State of Maharashtra [2011 ALL MR (Cri)  
1608]**

I have carefully gone through above rulings cited by the learned defence counsel. The co-accused is shown to have used stick and there is no external injury corresponding to the use of stick as mentioned in inquest panchnama and postmortem examination report. Moreso, co-accused has come later on after the present applicant/accused has called him and therefore the ground of parity is not available to the present applicant/accused. Thus the ruling of Toran Yadav (cited supra) is not applicable to the present case. Secondly, even if the order of Hon'ble Bombay High Court, Bench at Aurangabad is perused, then it has been observed that role of co-accused was not so active than that of present applicant/accused and the present applicant/accused has stabbed with knife and three stab injuries are reflected on the chest and abdomen of deceased and therefore role of present applicant/accused in the alleged crime is greater than that of the role of co-accused. Thus, the ruling of Vinod (cited supra) is not applicable and helpful to the defence.

06. Lastly, the learned defence counsel has strenuously urged before me that even if, in serious offences, bail cannot be refused and while arguing on this aspect, he has relied upon the

above referred case of Tarkeshwar . In the ruling of Tarkeshwar (cited supra) the applicants were charged the offences punishable under Sections 420, 467, 468, 471 read with Section 34 of the I.P.C., however the present applicant/accused stands prosecuted for an offences punishable under Section 302 read with Section 34 of the I.P.C. wherein the punishment provided is for death or life imprisonment. The facts of the case cited supra and facts in the case in hand are altogether different and therefore the said ruling is not applicable to the present case. The charge is already framed and trial can be expected. As prima-facie case is made-out, accused cannot be released on bail.

07. In view of my above discussion, I am not inclined to grant bail to the present applicant/accused. I, therefore, pass following order.

**ORDER**

Bail application Exh.14 in Sessions Case no. 235 of 2023 stands rejected and the trial is expedited. Prosecution to take steps for early disposal of this case.

Date-18/10/2023

(Kishore M.Jaiswal)  
Addl. Sessions Judge – 3,  
Jalna