

MHLA010018462023



**IN THE COURT OF SESSIONS, LATUR, AT LATUR
(Present : S.T. Tripathi)**

SESSIONS CASE NO.58/2023

Jaid Jahed Sayyad,

Age : 18 years, Occ.Education,

R/o.Bauddha Nagar, Latur.

Tq. & Dist. Latur.

..Applicant/Accused

Versus

The State of Maharashtra,

Through Vivekanand Chowk Police

Station, Latur, Tq.& Dist. Latur.

..Respondent/State.

APPEARENCE:

Mr.S.S.Dhavan, Learned Adv. for the applicant.

Mr. S.V.Deshpande, Learned P.P. for the Respondent/State.

Order below Exh.15

This is first application for bail after filing charge sheet under Section 439 of the Cr.P.C. in connection with Cr.No.82/2023 registered with Vivekanand Police Station, Latur u/ss. 302 and 504 of The Indian Penal Code (IPC).

2. Mr.Dhavan, learned counsel for the applicant submits that applicant is innocent person and he has been falsely implicated in the present crime. He is ready to abide by any of the terms and conditions to be imposed by this Court. He has got fixed and permanent place of residence. Investigation is complete. Nothing has been recovered at the instance of accused. It was the weapon from the people of the informant side. There is no independent witness. There was no intention or motive to commit murder. It is the case of single injury which is not likely to cause death. He has no criminal

antecedents. He is in custody since nine months. No purpose would be served by keeping him behind the bar. Hence, he prays for bail.

3. Learned P.P. Mr.S.V.Deshpande by filing pursis (Exh.16) adopted say (Exh.17) filed by Investigating Officer (I.O.). The offence is serious and punishable with death or life imprisonment. The Learned A.P.P. has strongly objected this application on the grounds that the offence committed by accused is recorded in C.C.T.V. which is seized by police. Evidence against accused are obtained. The deceased belongs Kureshi community. If accused is released on bail, then there is possibility of committing similar offence. Charge sheet against accused has been filed in this case. Accused may hamper, tamper or pressurize prosecution witnesses or evidence or abscond. Hence, he prays that it be rejected.

4. It is the case of the prosecution, as alleged that, on 02.02.2023 at about 8:00 p.m. informant along with his brother deceased Faijan had been to attend Sandal of Tajjoddin Baba Darga towards Siddeshwar temple's side. Rasul Pathan, Sufiyan Kureshi, Biban Kureshi friends of informant had met them in the Sandal. At about 9:00 p.m. they all while dancing came near Tajoddin Darga. While dancing Biban Kureshi and one unknown boy i.e. applicant/accused were abusing each other as Biban Kureshi dashed present applicant Rasul Pathan, Sufiyan Kureshi, and brother of informant deceased Faijan and informant himself tried to pacify the quarrel. At that time the applicant/accused whom Biban had dashed, pierced knife in the stomach of deceased Faijan and again he tried to gave blow of that knife to another person. Rasul Pathan snatched that knife from the hands of accused with the help of scarf. Thereafter accused and his companion ran away from the spot. Informant

came to know the name of accused Jaid Jahed resident of Baudha Nagar, Latur who pierced knife to deceased from Sufiyan Kureshi. Hence, he lodged F.I.R. on the basis of which above C.R. has been registered.

5. Heard both the sides. Perused record. It appears that on the ground of dash given by Biban to accused deceased went there to pacify the same. The applicant pierced knife in the stomach of the deceased which resulted into his death. Prosecution witnesses state about the direct involvement of the accused. Accused pierced knife in the stomach of deceased with intent to kill him.

6. Post mortem report reveals that deceased had sustained punctured stab wound present over lower abdomen at right side, 10 c.m. away from umbilicus of size 4.5 c.m. X 2.5 c.m. x cavity deep. Margins clear cut. Red blood infiltrated. Obliquely situated and acute angled at both ends. It is on the most vital part of the body. The injury is of such a nature that it would result in death in ordinary course of nature. Thus, the force of injury was so violent that it ultimately resulted in death. In the circumstance single injury is sufficient to attract Section 302 of I.P.C. Mr. Deshpande, learned P.P. relies on **Stalin V/s. State of Tamilnadu, 2020 ALL SCR (Cri) 1468** wherein it has been held that there is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. Hence, I proceed on the basis of principle of law expounded herein.

7. Learned Advocate for the applicant further submits that knife has not been recovered from the applicant but from

the person from the side of the deceased. It is the case of the prosecution that friend of the deceased tried to pacify and after applicant pierced the knife in his stomach they tried to snatch it away with the use of scarf while he tried to inflict injury to other person. In the circumstance even if there is no discovery u/s. 27 as contended by the applicant, it will not come for the rescue for the applicant. His other contentions that one single injury cannot result into death in ordinary course of nature or the weapon seized cannot cause such injury or testimony of witnesses recorded cannot be considered on the ground that witnesses are relatives can be conveniently dealt with during trial and not at this stage.

8. To buttress his submission that accused is entitled for bail as he has got fix and permanent place of residence and single injury has been caused, he relies upon (i) **Suhas Naik V/s. State of Goa & Ors, LD-VC-BA-22-2020 High Court Court of Bombay Bench at Goa** wherein it is held that the right of bail is not to be denied merely because of the community's sentiments against the accused.

(ii) **Mohd. Tahir V/s. State in Bail Appln. 1518/2021, 18 January 2022, Delhi High Court** wherein bail was granted holding that the petitioner was present when the alleged murder was committed after a gap of almost six hours between the petitioner's presence at the spot and the deceased's alleged time of death. Therefore, the presence of petitioner at the spot can only be confirmed during the course of trial.

(iii) **Sachin Santosh Benibagde V/s. State of Maharashtra, 2019 ALL MR (Cri) 3213 High Court of Judicature at Bombay (Nagpur Bench)** wherein prosecution claimed that considering 42 injuries on body of deceased, applicant should not be granted bail. Consequently it is held that number of injuries cannot be factor to deny bail. Bail was granted, on the

ground that accused does not have any criminal antecedents and investigation is already complete and charge sheet is filed.

(iv)**Shri.P.Chidambaram V/s. Central Bureau of Investigation, 2019 ALL SCR (Cri) 2174** wherein it is held that factors such as, nature of accusation, evidence, possibility of tampering evidence, likelihood of abscondence to be looked. There is no hard and fast rule discretion to be exercised judiciously and not arbitrarily.

(v)**Pradeep Shivaji Shinare V/s. The State of Maharashtra, 2013 ALL MR (Cri) 1317 High Court of Judicature at Bombay** wherein bail was granted on the ground that trial was not likely to take off.

(vi)**Smt. Akhtari Bi V/s. State of M.P.C., 2001 ALL MR (Cri) 743 (Supreme Court)** wherein it is held that in murder case prolonged delay confers right to apply for bail.

(vii) **Rajkumar Shahir Khandekar V/s. The State of Maharashtra & Anr., 2021 ALL MR (Cri) 2508 High Court of Judicature at Bombay** wherein bail has been granted to accused when accused and victim are not residing in same village, possibility of tampering and pressurizing of witnesses can be avoided by imposing conditions.

(viii) **Prabhakar Tewari V/s. State of U.P., Criminal Appeal No.152 of 2020 (arising out of Special Leave Petition (Cri.)No.9207 of 2019). D/d.24.1.2020** wherein it has been held that several criminal cases pending against accused cannot be considered as factors for refusal of bail.

(ix)**Pankaj Kumar Mali, Presently in Judicial Lock Up at Modern Jail, Colvale V/s. State, Thr.Public Prosecutor & Anr, Criminal Misc. Application (Bail) No.4 of 2022 dated 22nd February 2022 High Court of Bombay at Goa** wherein accused has been enlarged on bail on the ground that there was no criminal antecedents.

(x) Pawan Bhaskar Solunke V/s. The State of Maharashtra, 927 Bail Application No.67 of 2022 with Appln/392/2022 High Court of Judicature at Bombay Bench at Aurangabad wherein bail was granted holding therein that on perusal of the FIR and the investigation papers, vague and general allegations were made against the applicant and other accused.

(xi) Ramashish Yadav and others V/s. State of Bihar, 2000 Cri.L.J. 12 (Supreme Court) wherein it is held that common intention requires prearranged plan and it presupposes prior concert.

(xii) Anand Prafulla Behra V/s State of Maharashtra, 2009 ALL MR (Cri) 1710 High Court of Judicature at Bombay wherein bail was granted on the ground that accused was having no criminal antecedents and there was no credible evidence on record to connect the accused to the crime in question.

(xiii) Shiney Suraj Ahuja V/s State of Maharashtra, 2010 ALL MR (Cri) 92 High Court of Judicature at Bombay wherein bail was granted on the ground that investigation was over and charge sheet was filed.

(xiv) Shekhar s/o. Mahadu Gaikwad V/s. State of Maharashtra & ors, 2010 ALL MR (Cri) 96 High Court of Judicature at Bombay (Aurangabad Bench) wherein bail was granted on the ground that there was no possibility of fleeing from the justice and tamper with the evidence.

However, factual backgrounds in the above reported cases are entirely different. In the present case accused has pierced knife into the stomach which is not there in the above reported cases. Hence, above rulings are not applicable herein.

9. The offence is serious and punishable with death or life imprisonment. Applicant actively participated in the Crime. The role of the applicant is direct. The statements of witnesses are consistent about the role of the present applicant with the alleged commission of brutal murder. Lethal weapon i.e. knife has been used on vital part of body. This single injury has been sufficient to cause death in ordinary course of nature. The intention of the applicant is to be gathered on the spot and with the manner of commission of crime. The knife has been pierced into the stomach and single injury has resulted into death is sufficient to prima facie gather the intention of the accused in commission of crime. Merely filing of charge sheet cannot be considered as ground to release the applicant on bail. Offence is exclusively triable by the Court of sessions. Applicant may hamper, tamper or pressurize prosecution witnesses or evidence. Applicant has not made out case for bail. Consequently, I am not inclined to exercise my discretion in favour of applicant. Hence, order.

ORDER

This application stands rejected.

Date:05.01.2024.

(S.T.Tripathi)
Additional Sessions Judge,
Latur.