

Order below Exh.8

1) The present application is filed for regular bail in connection with the present case filed after investigating crime No.305/2022 under Section 307, 332, 353, 506 of the I.P.C. Registered with Police Station M.I.D.C., Latur, Tq. and Dist. Latur.

2) The above referred crime is registered on the basis of report lodged by informant Balaji Mahadu Mohite who is Police Inspector at Police Station Chakur and attached to Police Control Room, Latur. On 02-07-2022, he lodged report with Police Station M.I.D.C. that in connection with investigation of one case of accidental death crime No.97/2022 of under Section 302 of the I.P.C. was registered and in connection with investigation of that crime by the informant, he revealed that the present applicant has committed the murder of one unknown person, who was later on identified to be Sachin @ Lala Shivsamb Dawangave, R/o. Shirur Tajband. It is alleged that, the present applicant in conspiracy with some other persons have killed him and during investigation, the I.O. has arrested in all ten accused persons in that crime. It is alleged that accused/the applicant was the main accused and master mind behind murder of Sachin Dawangave, and therefore, he was brought to Police Station Chakur from

village Sangareddi while enquiring with applicant in respect of said crime. The accused during the morning hours at about 05:00 to 05:30 A.M. On 24-05-2022 flee away from the custody of Police, and therefore, crime No.99/2022 under Section 224 of the I.P.C was registered against him. It is also alleged that even prior to this accused is involved in crime No.134/2019 under Section 302 read with Section 34 of the I.P.C. registered with Police Station Ahmedpur.

3) The informant reported that accused fled away from the police custody of police and since then, police is searching him. He was searched even in other State and number of districts in Maharashtra; but he could not be traced out. He reported that since he was I.O. in that crime, he was taking search of accused as per the directions of his Superior Officer. He alleged that on 01-07-2022 when he was on duty at about 11:00 A.M., he received secret information that applicant is at his rented house in Shrinagar area of Latur. Immediately, the informant reported to his Superior Officers by phone and in civil dress only and by private vehicle, he proceeded towards the house of accused. He took with him pistol and bullets and proceeded along-with some other Police Officials. When he reached in front of the house of accused and when he was near the entrance door, he heard the noise and came to know that accused is about to leave his house soon, and

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therefore, without waiting for anybody and to arrest him, he immediately entered inside the house. On 01-07-2022 at about 01:30 P.M. he pushed the door and entered inside the house and called accused and was taking his search. He alleged that suddenly accused came from bathroom and pushed him by catching his neck with both hands. He was trying to strangulate him and kicked on his private part due to which he sustained blind injury. To save himself, he took out the pistol, but the accused tried to snatch it and during this scuffle between informant and accused, the informant fired from his pistol. He fired at the hip side of accused due to which the accused was injured. The other Police Officials brought the informant and accused out of the house and called ambulance and both informant and accused were admitted in Civil Hospital, Latur. Alleging that, accused obstructed informant while performing his official duty and tried to kill him, the above referred crime was registered.

4) The matter is investigated and charge-sheet came to be filed, and thereafter, the present application is filed submitting that this is first application after filing of the charge-sheet and earlier application for bail was filed prior to filing of charge-sheet which was rejected for the reason that investigation was going on.

5) The present application is filed submitting that the informant was no more Investigating Officer as on the

date of incident in crime No.97/2022 under Section 302 of the I.P.C. nor he was I.O. in crime registered against accused under Section 224 of the I.P.C. and thus it is submitted that informant has illegally entered in the house of accused. It is further submitted that, since the applicant flee away from the custody, departmental inquiry of informant was initiated by Police Department due to which the informant was having grudge in his mind against the applicant, and therefore, in a state of anger informant himself tried to kill accused by entering in his house. It is alleged that the informant fired without necessity and against the rules prescribed therefore and without permission of his Superior Officer. It is also submitted that the accused is thin and weak person who is not in a position to attack on informant in any manner and submitting that the informant himself tried to kill the accused but Police registered false crime against him, the applicant prayed for bail.

6) It is further submitted that the investigation is over and charge-sheet is filed, and thus, keeping the accused behind bar would amount to pre-trial punishment.

7) The application is objected by the I.O. by filing his reply Exh.11. The APP adopted the same reply.

8) The I.O. and A.P.P. objected the application submitting that other serious crimes are registered against

the applicant and there is danger to the life of accused and also danger to the life of informant and witnesses from accused, if he is released on bail. It is further submitted that accused may pressurize the witnesses and may commit like offence in future, and thus, prayed to reject the application.

9) Heard both sides at sufficient length. Shri. B.L. Shinde, the learned Advocate for the applicant submitted that the prosecution failed to collect any trustworthy and reliable evidence against accused. The maximum witnesses are hearsay. The I.O. has also recorded the statement of wife of accused, but he submitted that her statement ought to have been recorded by Magistrate under Section 164 of the Cr.P.C., and therefore, it should not be given much waitage. He submitted that even otherwise it only appears from her statement that the informant and accused were scuffling with each other. He further submitted that the injury sustained by informant are not that much serious which may cause death of anybody. He submitted that when it was necessary to appear to protect once life, the informant would have fired below the waist side; but he intentionally fired over the hip side of applicant and he himself has tried to kill him. It is further submitted that the applicant himself was admitted in Hospital for treatment for couple of months and now, he needs post treatment

care. He is also suffering form other disease and thus, he prayed for bail.

10) It is not disputed that the informant entered inside the house of applicant in civil dress and he entered alone and thus, except the statement of wife of accused, no material evidence appears to have been collected by I.O. It is submitted that the informant was not on duty on that day nor it was his duty to search and arrest the applicant in connection with investigation of crime registered against him. He thus submitted that the inquiry was initiated against informant due to fleeing away of applicant from his custody, and therefore, the informant was having grudge against applicant, and therefore, he falsely lodged report against him by trying to kill him.

11) Considering almost all the attending circumstances and the submission of Shri. B.L. Shinde, the learned Advocate for the applicant, his submission needs to be scrutinized, but that is possible only during the course of Trial. Admittedly, even as per the allegations in report, it appears that the accused was simply scuffling with informant and that itself prima facie appears to be insufficient to cause death of applicant.

12) Apart from him, the learned Advocate for the applicant relied upon following case law and submitted that mere pendency of cases against the accused is not sufficient

to reject his application for bail in other matters. I have gone through these following case laws submitted by him and found substance in his submissions. He relied on the following case laws -

- i. *Vinod K Vs. State of Kerala*, reported in (2023) 02 KL CK 0131,
- ii. *Sanjay @ Rajkumar Vs. State of Madhya Pradesh*, reported in (2023) 02 MP CK 0011,
- iii. *Amil @ Lalu Zalim Mahendrasingh Rajput Vs. State of Gujarat*, reported in (2022) 09 GUJ CK 0131,
- iv. *Maulana Mohd. Amir Rashadi Vs. State of U.P. & Anr.*, reported in (2012) 1 S.C.R. 311 and
- v. *Prabhakar Tewari Vs. State of U.P. & Anr.* in *Criminal Appeal Nos.152 of 2020 (arising out of Special Leave Petition (Cri.) No.9207/2019)*.

13) Considering the submission of learned Advocate for the applicant and Shri. S.V. Deshpande, the learned D.G.P. for the State and considering the submissions of I.O., and my prima facie observation about applicability of Section 307 of I.P.C., accused deserves to be released on bail by imposing conditions and hence order.

ORDER

1. Application is hereby allowed.

2. Applicant/accused be released on P.B. of Rs.1 lakh with one solvent surety of like amount and on condition that he shall not enter into Latur city till conclusion of Trial except for attending the Court matters pending against him and on further condition that he shall not pressurize any of the witnesses in any manner and shall not attempt to tamper with the prosecution evidence in any manner.

Date :- 15/03/2023.

(K. S. Totla)
Additional Sessions Judge-2,
Latur.