

MHNS070001482023

S. C. No. 15 of 2023

The State of Maharashtra
Vs
Bilal Ahmed Mohammad Ayyub

ORDER BELOW Exh.15
(Passed on 02.01.2024)

01] This is an application under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to accused No.2 in connection with C. R. No.62/2021 registered at Ramjanpura Police Station, Malegaon for the offence p/u/s 302, 201 r.w. 34 of the Indian Penal Code and Section 4 r.w. 25 of the Indian Arms Act and Section 37(1)(3) p/u/s 135 of the Maharashtra Police Act.

02] Ld. APP opposed the application by filing written say of I. O. at Exh.18. The informant also opposed the application by filing written say at Exh.19.

03] Heard, Shri. Amin Mustafa, Ld. advocate for the accused No.2, Shri. S. K. Sonawane, Ld. APP for the State and Shri Anjar Shaikh Ld. Advocate for informant. They argued vehemently.

04] Ld. Advocate for the accused No.2 submitted as under :-

This is the first bail application of accused No.2. As the investigation is complete, charge-sheet is filed in the present case. Accused No.2 came to be arrested on 28.07.2021 and remanded in P. C. R. till 07.08.2021. At present he is in magisterial custody. It is alleged that accused No.1 assaulted deceased by means of knife on his chest and accused No.2 assaulted the deceased by means of sword on his head and accused No.3 instigated accused No.1 and 2. Accused No.3 Jalil Ahmed

has been granted regular bail by the Hon'ble High Court of Judicature at Bombay vide order dt. 18.08.2023 passed in bail application No.2554 of 2022. The accused No.2 has not committed alleged offence. He is arrested only on the basis of suspicion. He is falsely implicated because of earlier dispute. As the charge-sheet is filed custodial interrogation with applicant-accused is not necessary. He is in Jail for more than two years. Accused No.3 has been granted bail, therefore, on the ground of parity the accused No.2 is also entitled for bail. There is no direct or indirect evidence against accused No.2 showing his actual involvement in committing the alleged offence. He has no criminal antecedents. He is having permanent residence. He will not pressurise the witnesses. His family members are dependent on him. He is ready to abide all conditions of bail. He will co-operate with the Investigating Officer for further investigation, if any. Therefore, regular bail be granted to the accused No.2.

05] On the other hand Ld. APP for the State submitted as under :-

There is sufficient evidence and material against accused No.2 showing his involvement in committing the murder of deceased. Accused No.1 to 3 assaulted the deceased by big knife and sword and committed murder. Accused No.4 and 5 abetted the said crime by providing sword to the accused No.2. In the CCTV Footage there is evidence in that respect. Specific overt act is attributed to the accused No.2. The offence is punishable u/sec.302 r/w 34 of I. P. C. and it is punishable with death or imprisonment for life. If the accused No.2 is released on bail he will pressurise the informant and witnesses. Offence of murder is a serious offence. If bail is granted there is every possibility of accused No.2 committing similar kind of offence. Therefore, the application for bail should be rejected.

06] Admittedly, C. R. No. 62/2021 is registered at Ramjanpura Police Station, Malegaon. After the completion of investigation police filed charge-sheet against accused No.1 to 5 for the offence p/u/s. 302, 201 r.w. 34 of the Indian Penal Code and Section 4 p/u/s 25 of Indian Arms Act and Section 37(1)(3) p/u/s 135 of the Maharashtra Police Act. Record shows that the charge-sheet is committed to the Sessions Court and case is allotted to this Court.

07] I have gone through the contents of FIR. It is lodged on 28.07.2021 at Ramjanpura Police Station. It is alleged that on 27.07.2023 between 07.15 p.m. to 07.30 p.m. the informant received phone call of his brother i.e. deceased, informing that accused had come at Panstall and they are demanding Gutkha and Panmasala and when he demanded amount, outstanding from them, the accused started threatening him and accused are possessing sword, knife etc., therefore, the informant come there immediately. In the FIR it is further alleged that when the informant was proceeding on his motorcycle he received phone call of his friend informing him that brother of informant has been pushed down by accused Jalil and accused Jalil is instigating his brothers i.e. co-accused to assault the deceased, therefore, accused No.1 assaulted the deceased on his stomach and chest by means of knife and accused No.2 assaulted the deceased on his head by means of sword, therefore, the deceased is severely injured and he has been taken in the Civil Hospital, Malegaon. According to informant when he reached at Civil Hospital, Malegaon condition of his brother/deceased was very serious therefore Medical Officer advice him to took his brother in another hospital and therefore, the deceased was taken in Ambulance Swad Hospital, Malegaon where doctor declared the deceased dead.

08] I have gone through the statements of other witnesses. They

are supporting the contents of FIR. It appears that statement of witnesses are also recorded u/sec.164 of Cr. P. C. In those statements role attributed to the accused No.2 is that he assaulted the deceased on head by means of sword. In the Inquest Panchanama and also in the Postmortem Notes it is noted that there is severe injury on the head of the deceased. As per the Postmortem Notes the cause of death is “ Death due to ‘ Asphyxia ’ due to cardio-reparatory arrest due to stab injury to lungs. ” There is sufficient material and evidence against accused No.1 and 2 showing that the brother of informant (deceased) died because of the injuries caused to him in the said incident. During investigation sword, big knife and blood stain clothes and other articles are seized by police. Therefore, prima facie it can be said that accused No.1 to 3 are involved in the crime. Specific overt act is attributed to accused No.2. He used sword and caused severe injury on the head of the deceased. Therefore, it can be said that accused No.2 had common intention with other co-accused to commit the murder of deceased.

09] The Hon'ble High Court of Judicature At Bombay granted bail to accused No.3 Jalil Ahmed on the ground that he was not carrying any weapon and there is no recovery from the applicant and the role attributed to accused is of instigation to other accused and active role is attributed to accused No.1 and 2. Therefore, considering the role attributed to accused No.2, it can be said that his role is different than the accused No.3 Jalil Ahmed, therefore accused No.2 is not entitled for bail on the ground of parity. The offence p/u/s 302 of I. P. C. is punishable with death or imprisonment for life.

10] After the filing of charge-sheet, the case is committed to the Sessions Court, Malegaon and allotted to this Court for the disposal as per law. Therefore, the trial can be expedited after framing the charge against accused. The prosecution is ready to conduct the trial on day to

day basis. Therefore and considering the nature and gravity of offence, punishment prescribed for the offence, the material against accused No.2 and objections raised by the Ld. APP, it can be said that the accused No.2 is not entitled for regular bail. As such, the application is to be rejected. Hence, I pass following order.

ORDER

1. The application is rejected.
2. Inform accordingly, to the D.G.P./PP, concerned Jail Authority and the Police Station Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to the applicant-accused.)

Date- 02/01/2024.
Malegaon.

(K. R. Patil)
Addl. Sessions Judge, Malegaon.
Dist. Nashik.