

Bail Application in Sessions Case No. 175 of 2021
(CNR No. MHNS070021522021)

The State of Maharashtra

Vs.

Abdul Raffe s/o. Rafeeque Ahmed

Order below Exh.3

[1] Applicant/accused - Abdul Raffe s/o. Rafeeque Ahmed has filed this application under section 439 of Code of Criminal Procedure for grant of bail.

[2] It is main allegation against the accused persons including the applicant that they all, in furtherance of their common intention, hatched conspiracy and killed one Anis. It is also alleged that prior to the incident, criminal conspiracy was hatched for killing of Anis in the office of the accused Mohammed Raza and the present applicant was the member of the said conspiracy.

[3] Learned Advocate for the applicant/accused submitted that name of the applicant/accused is not mentioned in the FIR. He was not present on the spot of incident. In his supplementary statement the informant disclosed that he came to know that the present applicant was the member of the

conspiracy which was hatched to kill Anis. It is only mentioned in the supplementary statement of the informant that prior to the incident there were two occasions when the accused persons including the present applicant/accused had gone to the house of the deceased on 22.07.2021 and 26.07.2021 and at that time, they all threatened Anis to kill. However, on the day of the incident the applicant/accused was not present on the spot. He has not played any role in commission of the offence. He is innocent and falsley implicated in the crime. The applicant is permanent resident of Nayapura, Malegaon, having no criminal antecedents. He is ready to abide all the terms and conditions which will be imposed by this Court. No purpose of the prosecution would be sufficed by keeping the applicant/accused behind bars as pre-trial punishment. On these grounds, he prayed for grant of bail.

[4] On the other hand, learned APP and the Investigating Officer submitted that during the investigation it is transpired that deceased Anis had hided mobile phone of accused – Ashfaque and applicant/accused-Raffe, therefore, they could not contact to the relevant persons in connection with their business and consequently, they suffered monetary loss. Therefore, they were insisting deceased Anis for return of the mobile phone. As he failed to return the mobile phone, the accused persons got angry and went to the house of deceased Anis and threatened him to kill, at that time, accused Ashfaque and others caused damages to the motorcycle of the deceased.

Thereafter, accused Asfaque, applicant/accused - Raffe and other accused persons hatched conspiracy to kill Anis in the office of the Mohammad Raza. Thus, applicant/accused - Raffe is part and parcel of the said conspiracy. Therefore, he may not be granted bail.

[5] On going through the material placed on record, it appears that during the investigation, the Investigating Officer recorded statements of informant Rahees, Suraiya (mother of the deceased), Tahira (wife of the deceased), Farid (brother of the deceased) and Aziz (uncle of the deceased). Their statements show that on 26.07.2021 at about 1.30 a.m., accused Ashfaque alongwith applicant/accused – Raffe alongwith other accused persons had come to their house and threatened Anis to pay money otherwise, he would kill him. At that time, Ashfaque damaged motorcycle of Anis. Moreover, it was transpired in the investigation that the deceased had hid mobile phone of this applicant/accused also. Therefore, the applicant/accused had reason / motive to kill Anis. In the circumstances, considering the role of the applicant i.e. member of conspiracy and act done by other accused persons resulted into the death of Anis. It appears that the applicant is equally responsible for causing the death of Anis. Therefore, filing of charge-sheet itself cannot be the sole ground for grant of bail. In the circumstances, if the applicant is released on bail, possibility of his absconding and tampering with the prosecution evidence cannot be rule out.

[6] Having regard to the above-mentioned facts and circumstances of the case, I am of the opinion that it would not be just and proper to grant bail to the applicant/accused. In the result, the application deserves to be rejected. I, therefore, pass following order. :

ORDER

Application is rejected.

(**S.B. Bahalkar**)
Additional Sessions Judge,
Malegaon.

Date 27.12.2021