

Sessions Case No. 175 of 2021

The State of Maharashtra

Vs

Ashpaque Ahmad Raees Ahmad

Order below Exh.69

[1] Accused - Ashpaque Ahmad Raees Ahmad has filed this application under section **439** of Code of Criminal Procedure for grant of bail.

[2] Prosecution mainly alleged that the accused persons including Accused - Ashpaque Ahmad Raees Ahmad, in furtherance of their common intention, killed Anis. It is also alleged that at the time of the incident, Accused - Ashpaque Ahmad Raees Ahmad was present on the spot and assaulted deceased Anis with knife.

[3] Learned Advocate for the applicant/accused submitted that informant is not an eye witness to the incident. Farid, the brother of the informant came to him and narrated about the incident. Then, the informant along-with Farid went to the Hospital where Anis was undergoing medical treatment. Thus, the FIR is based on the hear-say information. On the basis

of eye witness – Wasim which is recorded about one week after the incident, the accused has been falsely implicated in this crime. However, the accused has not played any role in the crime. He was not present there. He has not participated in the crime. Investigation of the crime is completed and the charge-sheet is filed. The accused is permanent resident of Gautam Nagar, Dyane, Malegaon. 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 accused behind bars. On these grounds, he prayed for grant of bail.

[4] On the other hand, the Investigating Officer and the learned APP submitted that during the investigation the Investigating Officer collected CCTV footage, wherein it is revealed that the accused was present on the spot at the time of the incident along-with accused persons and he assaulted deceased Anis with knife. Thus, there is ample material on record to show the involvement of the applicant/accused in this crime. 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 witness – Wasim. He is an eye witness to the incident. He states that accused Ashfaque initially assaulted the deceased by knife on his shoulder, however, cover of the knife was not removed, hence, the deceased did not sustain injury. Thereafter, accused Ashpaque removed the cover

of the knife and inflicted second blow, however, it was caught hold by the deceased in his hands. At that time, accused Ashpaque asked another accused Naeem to provide another knife. Then, accused Naeem gave him another knife. By the said knife the accused Ashpqaue assaulted the deceased on his stomach. The deceased collapsed. Even thereafter, accused Ashpaque was giving more blows of knife on his person. At that time, other accused persons and other persons gathered on the spot were asking accused Ashpaque not to assault more to the deceased. But, accused Ashpaque was shouting and saying other accused persons to do video recording of the said incident on mobile phone. Thereafter, all the accused persons fled away.

[6] Moreover, during the investigation, the Investigating Officer has recovered knife from at the instance of accused Ashpaque. So also Column No.17 of the post-mortem report of the deceased shows that the deceased was having multiple ante-mortem injuries on his person and the said injuries suggest that the death of the deceased is homicidal. Thus, there is prima facie direct evidence showing the involvement of accused – Ashpaque in this crime. In the circumstances, filing of charge-sheet itself cannot be the sole ground for grant of bail. There are many criminal antecedents against him. If accused Ashpaque is released on bail, possibility of his absconding and tampering with the prosecution evidence cannot be rule out.

[7] 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 accused - Ashpaque. 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 21.07.2023