

IN THE COURT OF SESSIONS JUDGE, BARAMATI.
(Presided over by J.L. Gandhi, Addl. Sessions Judge)

SESSIONS CASE NO.109/2023



ORDER BELOW Exh.16
(Passed on this 03.07.2023)

This is a bail application under Section 439 of the Code of Criminal Procedure.

2] As per the prosecution case there was dispute between family of the complainant and the family of accused persons on previous offence wherein the brother of complainant have assaulted the accused no.3 & 4. After his release on bail brother of complainant started residing at Satara but accused no.1 to 6 have conspired to commit his murder. Parents of complainant have requested the accused persons to forgive Mahesh but they threatened that they will not leave him and will kill. On 2.03.2023 brother of complainant came to her house. At that time applicant along with other accused committed the conspiracy and he was in touch with other accused on phone and instigated them to kill Mahesh. Father of complainant was found in the hand of accused no.3 to 6 and at that time accused no.2 was receiving instructions from applicant and accordingly assault was made causing grievous injuries to father of complainant namely Sunil Khandale. Being grievously injured Sunil Khandale was admitted Hospital but he died on 09.3.2023. Hence, complainant filed the complaint stating that accused no.3 & 4 have assaulted her father, mother and husband and tried to kill them whereas accused no.2 have pelted stone and bricks. It is alleged that accused no.1 instigated the other accused on phone. Hence, police have registered the offence against all the accused. Applicant Shankar came to be arrested and

after police station he was remanded to judicial custody. Now the investigation is over. Hence, applicant has filed the application for release on bail.

3] It is contended that the accused is innocent and his further detention is not required. He was not present at the spot of incident. There is nothing incriminating recovered from present applicant and there is no call record to show that applicant was in touch with the other accused at the time of incident. Investigation is over and charge-sheet is filed. He is permanent resident of Baramati, Dist.Pune. There is no any prima facie or circumstantial evidence against him. There is no direct or indirect evidence which shows his involvement in present crime. He is ready to abide all conditions if any imposed upon him. As such, application may be allowed.

4] Ld. APP opposed application by filing say Exh.18. It is contended that offence is of murder which is serious in nature. If accused no.1 is released on bail, there is possibility of pressurizing the witnesses. Accused no.1 and informant are residing adjacent to each other hence if released there is possibility of committing such type of offence again by him. It is submitted to reject the application.

5] Heard both the sides and perused the record. Ld. Counsel for applicant vehemently submitted that applicant is innocent and only on suspicion he was arrested. He submitted that there is no direct evidence against the applicant

6] Ld. A.P.P. submitted that there is direct evidence against the accused. The offence is punishable with life imprisonment and if applicants are released on bail there is every possibility that they will commit similar type of offence. It is submitted that applicants are

trying to organize the syndicate in order to create terror in area. Hence, bail be rejected.

7] Original informant Komal Rahul Misal has filed affidavit. So also witnesses Vinayak Sunil Khandale, Smt.Asha Sunil Khandale, Mahesh Sunil Khandale and Rahul Sarjerao Misal have filed their affidavits. All of them has stated that they have not given any statement against the applicant nor they have stated the name of applicant to police but for best reason known to police name of applicant was mentioned in their statement. They have stated on oath that applicant is not involved in any conspiracy nor he was present on spot nor he has given any instructions to the other accused. It is submitted that they have no objection for release of applicant on bail.

8] I have given thoughtful consideration to the submissions advanced by parties and also gone through the charge-sheet. It transpired from the charge-sheet that as per the statement of witnesses accused Aarti was present on spot and she was shouting that every care will be taken of the accused no.3 to 6 and she got the phone call of applicant Gavhale and he said that he should not leave Khandale family and kill by sword. However, those witnesses has stated before Court on oath that they have not given any statement to the police against applicant Shankar. There is statement of witness Tushar Shubham Gujar to the effect that applicant was present in Hotel Abhishek at the time of incident and he received some phone call. However, admittedly there is no statement of any witness that applicant was present on spot. So far as call record is concerned it will be matter of evidence. The CDR of applicant and accused Aarti is on record showing that they were in touch but in view of the statements given by the witnesses on oath, I find that those are subject to scrutiny

at the time of evidence. Admittedly, the applicant was not present on the spot of incident nor he actually involved while assaulting the deceased. As per the prosecution case he had committed the conspiracy to commit the murder of Mahesh whereas the assaultant has assaulted Sunil Khandale who died later on and other relatives of complainant. The investigation is complete. Considering the allegation made against the applicant and the affidavit of complainant and the other close relative of deceased, I find that, no purpose will be served by further detention of applicant. So far as apprehension is concerned, stringent conditions can be put upon the applicant. Hence, the following order is passed -

ORDER

- [i] The application (Exh.1) is allowed.
- [ii] The accused namely, **Shankar Ashok Gavhale**, be released on bail on his executing P.R. Bond of Rs. 1,00,000/- (Rs. One Lakh only) with a surety or sureties in the like amount in Crime No.108/2023 registered at Baramati Taluka Police Station, Dist. Pune, on the following conditions :-
 - [a] He shall comply with Chapter I Paragraph nos. 1 to 6 of the Criminal Manual 1980. (In view of order of the Hon'ble High Court passed in Criminal Application no.28 of 2010 in Public Interest Litigation no.25 of 2010 on January 29,2020).
 - [b] He shall not directly or indirectly make any inducement, threat or promise to any of the witnesses and shall not tamper the prosecution evidence.
 - [c] He shall not enter in the area of Chandramati nagar, Amarai, Baramati, till the conclusion of trial and does not try to contact or pressurize any of the witnesses.
 - [d] He shall not leave India without permission of the Court.

Baramati.
Date: 03.07.2023

(J. L. Gandhi)
Addl. Sessions Judge 2,
Baramati, Dist. Pune.

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file judgment are same word for word as per original judgment.

Name of Steno : B.R. Jakka (Steno G 1)
Court Name : Shri. J. L. Gandhi, District Judge 2
and Addl. Sessions Judge, Baramati.

Date : 03.07.2023
Judgment/order signed by P.O. On : 03.07.2023
Judgment/order uploaded on : 03.07.2023