

IN THE COURT OF DISTRICT JUDGE-1 & ADDITIONAL SESSIONS
JUDGE, PANVEL-RAIGAD
ORDER BELOW EXHIBIT 77 IN SESSIONS CASE No.427/2019
(Old S.C.No.119/2018)
CNR NO.MHRG170027292019
(Dated 21/03/2022)

The applicant/accused – **Ajinkya @ Avi Anant Shinde** has preferred the present application successively u/s.439 of Cr.P.C. for grant of bail in C.R.No. I-291/2018 registered with Panvel City Police Station, u/sec.302, 324, 323, 504, 506 r/w.34 and 120-B, 201 of I.P.C. on new grounds.

2. Heard Ld.Adv.Shri V.V.Bambarde for the applicant who submitted that, the applicant/accused No.1 has been arrested on 01/07/2018 on the complaint lodged by the deceased Shakil Salim Shaikh during his hospitalization after he suffered injuries by giving information that, on 30/06/2018, he had some altercations with the present applicant in respect of the payment of fare of rickshaw driven by the complainant Shakil and at that time, the present applicant was boasting his association with accused No.6-Rajesh Kaikadi. It has been further informed that, on the same day, at about 10.35 p.m, the applicant accompanied by other co-accused persons came back again and took fight with him in which the applicant assaulted by iron rod on his head and accused No.2-Baboo Kaikadi assaulted by knife on his abdomen, forehead and cheek. It has been further informed that, at the material time when his

mother and wife came to rescue him and tried to intervene, accused No.2-Baboo Kaikadi also assaulted his mother and thereafter, all the assailants ran away.

3. On the said information, the F.I.R was lodged and subsequently the applicant and other co-accused persons were arrested. After investigation, the charge-sheet is filed. Ld. Adv. submitted that, the applicant has been falsely implicated in the crime and he has no specific role assigned by the witnesses. Ld.Adv. submitted that, the bail applications filed by the applicant before this court as well as before the Hon'ble High Court have been rejected and the present application is filed on new grounds.

4. Ld.Adv.submitted that, on perusal of the post-mortem notes it appears that, the cause of death is shown as 'due to cardio-resperitory failure due septicemia following hemorrhage following stab injury to left side of chest and abdomen'. Ld.Adv. submitted that, as per the case of prosecution it has been alleged that at the material time the applicant has assaulted iron rod on head of the deceased and that the other co-accused persons have assaulted by knife on chest and abdomen. Ld.Adv. submitted that, considering this aspect the injury allegedly

sustained by the applicant was not a fatal injury and the deceased died due to other injuries sustained by him in an attack. Ld.Adv.submitted that, considering this aspect there is every possibility of section 302 of IPC will not be applicable to the present applicant. Ld.Adv.submitted that, the said aspect has not been advanced before the court in earlier bail applications and as such the same can be consider as a new ground for consideration of application.

5. Ld. Adv. submitted that, during the pendency of matter the other accused persons have been granted bail either by this court or by the Hon'ble High Court.

6. Ld.Adv.submitted that, the since arrest applicant is behind bar and his family is suffering. Ld.Adv.submitted that, there are no complaints from the prosecution witnesses regarding the tampering of evidence by the co-accused persons who are granted bail. Ld.Adv.submitted that, the applicant can be released on bail on new ground as well as on the ground of parity and prayed accordingly.

7. Ld.APP Shri.Yerunkar resisted the application and submitted that, the earlier bail applications filed by the

applicant prior to as well as after filing of charge-sheet have been rejected on merits and there are no new grounds agitated by the applicant. Ld. A.P.P submitted that, this court as well as the Hon'ble High Court has consistently observed the role of the applicant in the present crime and considering the gravity of offence has rejected his prayer for bail.

8. Ld.APP submitted that the death of deceased has been occurred due to cumulative effect of all the injuries and mere opinion of the medical officer for cause of death cannot be consider for giving clean chit to the applicant for his involvement. Ld.APP submitted that the other accused persons have been granted bail after considering their specific role and as such, ground of parity will not be applicable for the applicant. Ld.APP also pointed out the criminal antecedents of the present applicant as well as certain communications from the prison authorities informing the breach of peace and law and order in the prison by the applicant and submitted that, the conduct of the applicant apprehends the tampering of evidence in the matter.

9. Upon hearing the Ld.Advocates and after going through the charge-sheet in consonance with the submissions of the Ld.

Advocate of the applicant as well as after going through the earlier bail orders, this court is of the view that, the Ld.Advocate tried to point out from the postmortem notes that, the deceased died to due cardio-respiratory attack and not due to the injuries sustained by the deceased, more particularly injuries on head. According to Ld.Advocte the injuries on abdomen and chest by sharp edged weapon have resulted in death of deceased and the injuries sustained on the head was not at all responsible for his death. Needless to mention that the head of human is consider as vital organ and column No.17 and 19 of the postmortem notes clearly indicates that, the skull bone of the head was fractured in assault by the applicant. At this juncture the injuries cannot be segregated for the role of the concerned accused at the time of attack so also the cumulative effect of all the injuries is required to be considered as cause of death of deceased. It is also to be noted that the cardio-respiratory attack was also a cumulative effect of all the injuries and it cannot be concluded that the deceased died due to heart attack. As such the submissions of Ld.Advocate cannot be consider at this stage while considering the application for bail.

10. It is to be noted that, the accused persons who are released on bail either by this court or the Hon'ble High Court

have been granted bail considering their alleged role assigned by the witnesses and their involvement in the crime. Needless to mention that, as observed in earlier bail applications, there exists specific role of the applicant alongwith motive behind the crime corroborated by eye witnesses.

11. In the circumstances, though this court has all sympathy upon the conditions of the family members of the applicant, considering his involvement in the crime and the criminal antecedents to his discredit, the applicant cannot be enlarged on bail. Hence, order.

ORDER

1. Application Exhibit-77 is rejected.
2. Application is accordingly disposed of.

(Directly dictated in open court on the office computer.)

Panvel
Date :-21/03/2022.

(R. G. Asmar)
Additional Sessions Judge,
Panvel-Raigad.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	S.J.Sheth
Name of Court	Addl. Sessions Judge, Panvel-Raigad
Date of Dictation	21/03/2022
Order signed by the P.O. on	21/03/2022
Order uploaded on	23/03/2022