

Order passed below Exh.06 in Sessions Case No.34/2023**CNR Number:MHSN040005282023****(State of Maharashtra V/s. Sharad Machindra Dutale)**

This is an application filed by the accused for grant of bail under Section 439 of the Code of Criminal Procedure in C.R. No.104/2023 of Islampur police station for the offences punishable under Section 302 IPC. The say of I.O. and learned APP has been called and the same has been filed by them below Exh.07.

02. Perused the application and say. Heard respective advocates at length.

03. In short, it is the case of the prosecution that, the alleged incident occurred on dated 16/02/2023 at about 08.30 p.m. on Tujarpur Phata to Tujarpur village road, near the cattle shed of Sambhaji Dnyanu Patil. One Mr.Karan Vasant Sawant filed complaint on dated 17/02/2023 at Islampur police station about the incident alleging that the accused assaulted the deceased by iron rod and other instruments and the deceased succumbed to said injuries while taking treatment in hospital. The accused and deceased were having strained relations due to investment in dairy business. The deceased started his separate milk collection center which resulted in loss to the accused. Having grudge of the previous enmity the accused had assaulted the deceased by means of dangerous weapons with intention to commit his murder. Hence, the report came to be lodged against him at Islampur police station.

04. The learned Advocate for accused made submission that, the accused is innocent and falsely implicated in this case. There is no intention or motive in the commission of offence. The accused is

involved in the case merely on the basis of suspect and there is no any cogent or convincing evidence against him. The entire case of prosecution is based on circumstantial evidence and there is no direct evidence against the accused. The prosecution failed to make out case against accused persons. The investigation is complete and charge-sheet is filed. Accused is permanent resident of Ahirwadi, Tal.Walwa, and also he does not have any criminal background. Accused is the only earning member of his family. He undertake not to abscond or tamper with the prosecution evidence. He is ready to abide with all conditions, if imposed while granting bail. Hence, learned Advocate for accused prayed for granting bail to the accused.

05. To substantiate the grounds for grant of bail, Ld. APP placed reliance on the authority in the case of **'P.A. Chandru V/s. State' reported in 2014 (4) Crimes 200 (Karnataka)**. In the given matter the prosecution case was based on circumstantial evidence. Hence it was held that the petitioner/accused deserved to be allowed bail.

06. Similarly, the Ld. Advocate of accused placed reliance on the authority in the case of **'Shivlingu @ Shiva and another V/s. State of Karnataka', 2010 (2) Crimes 762 (Kar)**. This case was also based on circumstantial evidence hence it was held that it is a fit case to allow bail to both the petitioners.

07. Further the Ld. Advocate of accused placed reliance on the authority in the case of **'Akshay Suresh Hadavale V/s State of Maharashtra' 2015 (2) Crimes 367 (Bom)**. In the given matter the accused persons were released on bail. It was held that taking into consideration the papers of investigation, completion of investigation and presentation of charge-sheet, the accused have made prima-facie case for grant of bail. The prosecution case in said matter was based on

last seen theory. However, the victim girl did not disclose anything about the accused persons showing intention or motive of accused to eliminate the deceased. The case was of circumstantial evidence. Hence, bail was granted.

08. Relying upon the ratio of the authorities cited supra, Advocate for accused prayed for grant of bail to the accused.

09. Learned APP has opposed the bail application on the ground that, offence is of serious nature. There is every possibility of threatening of prosecution witnesses and tempering with the prosecution evidence. The applicant will abscond, if released on bail. Hence, the accused is not entitled to be released on bail. Along with this argument learned APP has specifically submitted that if the Court come to the conclusion of granting bail to the accused, the same may be granted subject to imposition of certain conditions.

10. It is pertinent to note that, in the present matter charge-sheet is filed on 09/05/2023. The record shows that the C.A. report is yet not produced on record. There is huge number of witnesses arrayed in the witness list. The Charge is yet not framed and the trial is not commenced. It transpires from said circumstances that there is very meager possibility of completion of trial in the near future in speedy manner.

11. Above all, I have gone through the statements of witnesses and the material produced by way of charge-sheet. It prima-facie transpires that the case of prosecution is based on circumstantial evidence. There is no direct evidence against involvement of accused in the present crime. It is not a fit stage to discuss about the merits of the case as the same will be decided after recording evidences on completion of trial. At present juncture, the Ld. defence counsel has

rightly placed reliance on the authorities cited supra, in which the issue regarding bail to the accused in the cases based on circumstantial evidence has been dealt with. To my mind, the authorities cited supra are squarely applicable here.

12. Moreover, the prosecution has not substantiated the fact that the accused will flee from justice, if released on bail. The accused is resident of Ahirwadi Tal.Walwa and he has undertaken to remain present on every fixed date of trial and co-operate with the prosecution. The accused is ready and assured that, he will not tamper with the prosecution witnesses. In said situation, I hold that there is no material on record to show that, the accused will misuse his liberty to subvert justice or tamper with the prosecution witnesses. The accused is ready to abide by all the conditions, if imposed by the Court while granting bail. In said circumstances, I hold that the ends of justice requires the grant of application for releasing the accused on bail subject to certain conditions. Accordingly, I proceed to pass following order ;-

ORDER

1. Application is allowed.
2. Accused Sharad Machindra Dutale in C.R.No.104/2023 of Islampur Police Station, be released on bail on his executing P.R. Bond of Rs.1,00,000/- (Rs. One lac only), with one surety in the like amount for the offences punishable under Section 302 of IPC.
3. The accused shall furnish his contact number and the contact number of his sureties at the time of furnishing surety.
4. He shall not threaten, influence or tamper with the prosecution witnesses and evidence.
5. He shall not indulge in similar type of offence or any other offence.

6. He shall remain present before the Court on each date.
7. Failure thereof shall result in giving right to the prosecution to move for cancellation of the bail.

Date: 03/07/2023.

(A. H. Kashikar)
Additional Sessions Judge,
Islampur.

CERTIFICATE

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

Name of the Stenographer	:	J. R. More, Steno, (Grade-I)
Court Name	:	Adhoc District Judge – 1 & Addl. Sessions Judge, Islampur.
Date	:	03/07/2023.
Signed by P.O. on	:	04/07/2023.
Uploaded on	:	04/07/2023.