

ORDER BELOW BAIL APPLICATION (EXH.80) IN
SESSIONS CASE NO. 63/2023
CNR : MHST01-001539-2023

(State of Maharashtra Vs. Sandip Balwant Yadav)

By this application, applicant/accused-Sandip Balwant Yadav is seeking regular bail u/s.439 of the Code of Criminal Procedure, in connection with crime registered with Wathar Police Station vide C.R.No. 107/2023 for the offence p/u/s. 302, 341, 120(B), 504 & 506 r/w.34 of the Indian Penal Code, 1860 and Sec. 3 r/w.25 of the Arms Act, 1959.

2] The case of prosecution in brief is that deceased Sunil Shankar Bhoite was the brother of the informant-Mohan Shankar Bhoite. Accused No.4-Chhaya Namdev Bhoite is the wife of another brother of deceased and informant- Namdeo Shankar Bhoite. She has two daughters namely, Reshma and Sushma. Accused No.1-Ravi Yadav is the husband of Sushma and son-in-law of accused No.4-Chhaya. Due to matrimonial dispute, Chhaya is residing separately since 1989. She has inherited immovable property bearing Gat No.633 at Manmoda village. She sold her share to the accused No.3- Umesh Bhoite on 12/08/2022. This property was under the cultivation of the husband of accused No.4-Chhaya. On that count, there was dispute between accused Chhaya and the family members of deceased. The accused Chhaya and other accused were not on good terms with the deceased-Sunil and his brothers on account of land dispute.

3] It is alleged that on 17/04/2023 at around 7.07 p.m.,

when the informant- Mohan was at his home, his nephew- Sai Sunil Bhoite informed him on phone that when he was proceeding towards the field on the motorcycle of his father, accused No.1 and 2 came in a Car and obstructed them and on instigation of accused No.2, accused No.1 fired bullet on his father- Sunil Bhoite. Sherkhan Pathan and Fardin Pathan took Sunil to the Government Hospital at Pimpode Bk. The informant alongwith his wife immediately rushed to the hospital. There he came to know that Sunil died due to the bullet injuries. With these allegations, the informant lodged report to Wathar Police Station.

4] On the basis of his complaint, offence came to be registered as above.

5] In support of bail application, Ld.Advocate Shri.Patil for applicant/accused has argued that applicant/accused has been arrested on 18/04/2023 and since then he is in Jail. It is argued that applicant has been falsely implicated in the crime. The FIR is based on hearsay evidence. The statement of witness-Pravin Bhoite is inadmissible. There is inordinate and unexplained delay in recording the statements of the witnesses. Ld.Advocate Shri.Patil then argued that present accused had filed RTI application regarding land records against the informant's alleged mismanagement and hence he was falsely implicated. It is submitted that there is no recovery of any incriminating article and evidence from the present applicant/accused. It is further submitted that the investigation is completed and charge-sheet has been filed, therefore further custody of the applicant is not required. There are no criminal antecedents against the applicant. He

is ready to abide all the terms and conditions, if any imposed by the Court while releasing him on bail. Hence, prayed to allow the application.

6] Per contra, Ld.APP through Investigating Officer filed say and strongly resisted the application on the ground that there is possibility of pressurizing juvenile-witness- Sai Sunil Bhoite, age 14 years and witness- Rohit Sambhaji, if applicant is released on bail. It is further contended that the present accused is prime accused, as he had instigated accused No.1 to shoot Sunil. It is further contended that accused No.3 and accused No.4 have been released on bail and at present they are residing at Pune. The present applicant is also resident of Pune, hence there is possibility of committing any body offence at his hands against the relatives of the deceased. It is further argued that present applicant appears to be aggressive, so he will against commit any offence, if released on bail. So also, there is every possibility of pressurizing the sons of informant, the sons of panch witnesses and other witnesses, as they are residing at Pune for education purpose. The accused have committed the offence of murder by planning a criminal conspiracy.

In his additional say, Ld.APP has contended that on 30/03/2024 when informant- Mohan Bhoite was present in village Nune, Tal. & Dist.Satara, he received phone call on his mobile No.9637224809 from unknown mobile No.9689815087 and on asking, told his name as Sandip Yadav i.e. present applicant/accused No.2. He threatened informant on phone that if he opposed for his bail application, then he will kill him. Accordingly, N.C. No.354/2024 for the offence u/s.507 of

IPC came to be registered against him. It is contended that, therefore there is danger to the life of family members of informant at the hands of accused.

7] The original complainant-Mohan Shankar Bhoite filed say at Exh.105 and resisted the bail application, wherein it is contended that the accused is terror. He is politically influencing person. There is a tense atmosphere in the village. Possibility of tampering and pressurizing of witnesses cannot be ruled out, as the witnesses and informant are residing in the same village, if accused is released on bail. The incident of murder is the outcome of previous bad blood between the deceased and accused persons. It is further contended that the present applicant is the mastermind behind the alleged incident. He has hatched conspiracy with the other accused on account of civil dispute. If the accused is released on bail, then he will cause hindrance in the investigation and dissuade the witnesses. The family members of the deceased and informant are under immense fear. There is danger to their lives. It is further contended that though the applicant/accused is in jail, he has threatened on phone to informant of dire consequences and accordingly informant lodged complaint at Satara Taluka police Station vide N.C. No. 354/2024. Therefore, strongly resisted the bail application.

8] Heard Ld. Advocate Shri.Patil for applicant/accused and Ld.APP Shri.N.D.Muke. Perused the record. Following points arise for my determination. My findings thereon with reasons are as under:-

POINTS**FINDINGS**

- | | |
|---|---------------------|
| 1. Whether the applicant is entitled to be released on bail ? | In the negative. |
| 2. What order? | As per final order. |

:-REASONS:-**As to point no.1 :**

9] On perusal of FIR it seems that, Chhaya is the first wife of informant's brother Namdev. They have two daughter namely, Sushma & Reshma. Marriage of Sushma was solemnized with Sandeep Balwant Yadav & Reshma's marriage was solemnized with Sandeep's real brother Ravi. Chhaya received certain agricultural land from her parents in succession. The said land is disputed and under cultivation of the informant's brother Namdev & Sunil. In the year 2021 Sushma Yadav filed a civil suit in the Court at Koregaon for partition of her share in the disputed land. According to the informant, Sandeep & Ravi, in collusion with Chhaya Bhoite were forcing and threatening the informant and his brothers for share in the disputed land. Since then there has been a rivalry and dispute between the informant, his two brother Namdev, Sunil & Chhaya, Sandeep, Ravi, Sushma & Reshma.

10] According to the informant, Gut No.633 is total ad-measuring 90 guntha. Out of the same nearly 45 guntha land came to be purchased prior to 30 years in the name of the informant's mother. Thereafter, remaining 45 guntha land has been agreed between Chhaya & the informant's father to be kept in possession with

informants family, permanently. Accordingly, the whole Gut No.633 has been in possession of the informant & his family. Despite, Chhaya sold 45 guntha land of Gut No.633 to Umesh Bhalerao Bhoite, resident of same village, behind back of the informant & his family members. Therefore, there has been a dispute. On 20.09.2022 Umesh Bhoite forcefully entered in the field and committed theft of corn crop. A complaint was also lodged with the police. Thereafter, Umesh Bhoite came to plow the land, but Namdev & Sunil objected him to do so. Thereafter, Umesh Bhoite threatened to kill them and removed them from the field. Further, according to the informant, Gut No.625 is ad-measuring 75 guntha. His father given the said land to Sunil. But the said land is yet to be entered in the name of Sunil & so the said land is still in the name of Chhaya Bhoite in the revenue records. According to the informant, Umesh Bhoite was trying to purchase the land of Gut No.625 at the instigation of Sandeep & Ravi. Therefore, Sunil lodged a civil suit against Chhaya Bhoite and other co-sharers. For these reasons Chhaya Bhoite, Sandeep, Ravi & Umesh Bhoite were especially angry on Sunil.

11] As per allegations this is a pre-planned murder out of dispute and old rivalry due to land. In this regard, civil suit filed by Sushma Yadav in the year 2021 in the Court at Koregaon for partition of her share in the disputed land & civil suit filed by the deceased Sunil against Chhaya Bhoite and other co-sharers clearly shows that there has been a dispute over the land between the informant, deceased Sunil and applicant's / accused. A non-cognizable complaint lodged by the deceased Sunil on 15.09.2022 against applicant's/accused also shows the dispute and rivalry between the deceased Sunil &

applicants/accused, since prior to the incident. Brother of the deceased has stated about their dispute and rivalry and stated that prior to the incident applicants/accused had many time threatened Sunil to kill. Even witness Harishchandra Bhoite, who acquainted with the deceased and applicant/accused has stated that prior to the incident twice there were meetings between both parties for settlement. But even in the said meetings also the applicant Sandeep asked them for not to interfere. He also threatened for consequences to the deceased.

12] The alleged incident of murder took place on 17.04.2023 at about 7:30 p.m. The son of the deceased is the sole eye-witness of the incident. He has stated that at the relevant time he along with father-Sunil had been proceeding on motorcycle to fill up petrol. That time the applicant/accused Sandeep & Ravi came in a Car. Sandeep was driving the said Car. He drove the Car across the motorcycle of the deceased and constrained him to stop. Thereafter, Sandeep uttered the deceased that do you want land?. Then the applicant Ravi instigated Sandeep to fire and kill Sunil and then Sandeep fired towards the deceased due to which he fell down. Then both of them came out of car. Ravi instigated Sandeep to fire and finish him. Thereafter, Sandeep again fired bullets to the deceased and then they went from the spot. Sherkhan is the witness who just after the incident was passing on the road. He has stated that Sunil was felling down in injured conditions. He then carried him to civil hospital.

13] There is witness from the village who is acquainted with both parties. He has stated about dispute and rivalry between the deceased and the applicant. He also has stated that on 17.04.2023 i.e.

just prior to the incident Sandeep & Ravi had been to his home and asked him the difference between murder and attempt to murder. Thereafter, Sandeep told him that soon he would understand what is murder case. Thereafter, on the same day he came to know that Sandeep & Ravi killed Sunil.

14] Another witness from the village has stated that, he is well acquainted with both parties and he also knew about their dispute and rivalry over the land. He stated that on 14.04.2023, in the afternoon he was proceeding towards temple. As one heavy vehicle came in front of him, he stopped his motorcycle in front of house of Chhaya Bhoite. That time he saw Umesh Bhoite, Chhaya Bhoite, Sandeep & Ravi inside the house. He heard that Chhaya Bhoite told Sandeep that, they won't be able to move forward unless one of Sunil or Mohan is eliminated. Thereupon, Sandeep told that he has already arranged the weapon.

15] Inquest panchanama, postmortem report, spot panchanama, seizure panchanama of Pistol along with two live cartridges, photographs etc shows that death of the deceased is homicidal. CDR locations of the Sandeep & Ravi, as per investigation, shows at the spot when the incident took place. Son of the deceased is the direct eye-witness of the incident. Most curtail aspect is that there has been old dispute and rivalry of all accused with the deceased over land. Civil dispute and other complaints lodged shows that all accused have been interested in the disputed land. What evidence on record is that, out of the said rivalry all accused was decided to eliminate the deceased. Accordingly, all accused had made a plan. applicant/accused

Sandeep & Ravi arranged weapon-pistol and thereafter they executed their plan and killed the deceased.

16] So far as role of the applicant- Ravi is concern, his role can not be separated from other accused especially from Sandeep. I say so because, at the time of the actual alleged incident main assaultant Sandeep was accompanied with Ravi. Evidence on record shows that Ravi instigated Sandeep to fire bullet and kill the deceased. Even thereafter also Ravi came out of car along with Sandeep and instigated him to fire bullet towards the deceased and to kill him. Therefore, merely because Ravi has not fired bullet, his role can not be separated from Sandeep.

17] In all, nature of the alleged crime is quite serious. The alleged incident is the out come of the old dispute and rivalry over the land. Out of anger all accused had decided to eliminate the deceased and accordingly weapon came to be arranged and they executed the plan. Alleged way to kill the deceased is also brutal. The applicant though resident of Pune, he used to visit his wife's parents home i.e. the village where the incident took place. All witnesses are from Tal. Koregaon, Satara. The learned Advocate for the complainant has argued that, even both accused are in jail, they telephoned the informant and threatened him. In such circumstance, if the applicant/accused is released on bail, any unforeseen incident can happen. From all these circumstances and evidence it would not be just to release the applicant on bail. Hence the bail application is liable to be rejected. Accordingly, I answer point no.1 in negative and pass following order.

ORDER

Application (Exh.80) stands rejected.

Satara.

Date: 24/05/2024

(D. L. Nikam)

Addl. Sessions Judge, Satara.