



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

970 BAIL APPLICATION NO. 2094 OF 2024

Shaikh Noor Shaikh Lal
Age-40 years, Occupation-Labour,
R/o. Borwand Khurd,
Tq. & Dist. Parbhani

.. APPLICANT

VERSUS

1] The State of Maharashtra
Through Office In charge,
Police Station Nava Mondha, Parbhani
Dist.Parbhani.

2] The Superintendent of Police,
Parbhani, Dist. Parbhani.

.. RESPONDENTS

...
Advocate for Applicant : Mr. S. J. Salunkhe a/w Ms.P.S.Ingle
APP for Respondent-State: Mr. A. A. A. Khan
...

CORAM : ARUN R. PEDNEKER, J.
RESERVED ON : 18.12.2024
PRONOUNCED ON : 09.01.2025

P.C. :

1] Heard learned counsel for the applicant Mr. S.J. Salunke alongwith Ms. P. S. Ingle and the learned APP for the respondent-State.

2] By the present application, the applicant is seeking regular bail as he was arrested on 08.07.2024 in

connection with Crime No.332/2024 dated 07.07.2024, registered with Nawa Mondha Police Station, Parbhani, District Parbhani, for the offences punishable under sections 103 (1) [302 of I.P.C], 238 of the Bharatiya Nyaya Sanhita, 2023.

3] In brief, the case of the prosecution against the applicant as reflected in the F.I.R (dated 07.07.2024) is that the informant (son of the deceased Laxmi) informed the police that the deceased was providing tiffins to school students. The applicant had relations with his mother and that the applicant was visiting home of informant to meet his mother for past one and half years and there was some dispute between them on account of monitory transactions. On the earlier occasion the applicant had threatened his mother that he would kill her. It is also stated in the F.I.R. that 10 to 12 days prior to the incident in the morning hours at 10:00 A.M., the applicant had been to the house of the informant when his mother had locked house from inside and had driven away the applicant out of the house without permitting him to come in. At that time the applicant had threatened his mother that he would kill her. It is also stated that the applicant has criminal tendency and as such normally the people do not report him to the police.

4] It is further stated that on 07.07.2024 at 10:30 A.M. the informant had been to the rally of Jarange Patil (activist). At that time his mother Laxmi, father

(Dnyaneshwar) and brother Onkar were at home at 02:00 P.M. The informant, after finishing the meeting of Jarange Patil, went to his friend, namely, More and slept at his place till 04:30 P.M. Approximately at 04:30 p.m., the informant came back to his house when he found that the iron gate of house was not locked. He went in the house, closed the door and went to the bathroom, washed his legs and thereafter he went inside. He found that his mother was lying on the floor bleeding and she had 2-3 major wounds on her head. He called her mother but she was unconscious. Thereafter, he called his neighbours and took her to the hospital where the Doctor declared her dead.

5] Meanwhile the informant called his father to the hospital, when father informed him as under :-

त्यानंतर मी माझे वडीलांना सरकारी दवाखान्यात बोलवून घेतले असता मला माझ्या वडीलांनी सांगितले की, आज दिनांक 07.07.2024 रोजी ते घरी असतांना दुपारी 02:00 सुमारास नुर शेख हा लाल रंगाचे मोटार सायकलवर लाल रंगाचा शर्ट निळसर रंगाची पॅन्ट व गळ्यात भगवा रुमाल घालून घरी आला होता, तो घरी आल्या नंतर त्याने दम देवून माझ्या वडीलांना घरा बाहेर हाकलून दिले. त्यामुळे माझे वडील ते काम करीत असलेल्या जयस्वालच्या दारूच्या दुकानावर दुपारी 02:30 वाजण्याचे सुमारास निघून गेले. ते घरातून जातांना माझी आई व नुर शेख हा आमचे घरात होता व तो आईला पैशाच्या कारणावरून भांडत होता. असे मला माझे वडीलांनी सांगितले आहे. त्यानंतर मी दुपारी 04:30 वाजता घरी गेलो असता माझी आई रक्ताच्या थारोळ्यात पडली होती. त्यावरून माझी खात्री झाली की, नुर शेख रा. बोरवंड याने पैशाच्या कारणावरून माझ्या आईचा कसल्यातरी शस्त्राने डोक्यात मारून माझ्या आईचा खून केला आहे.

6] Accordingly, the information was lodged that he has deep suspicion that the applicant has killed his mother as he was in company with his mother after 02:00 P.M. and that the applicant had fight for some monitory reasons with mother of the informant. So also, earlier threats were given by the applicant to the deceased. On the basis of the information dated 07.07.2024, the applicant was arrested on 08.07.2024. In the arrest Panchnama dated 09.07.2024, the applicant has surrendered his clothes which he was wearing on the date of his arrest.

The details of the property seized are described in seizure panchnama dated 09.07.2024 which is as under:

I) एक पांढऱ्या रंगाचे फुल भायाचे कॉटन चे शर्ट ज्यामध्ये कॉलर चे खाली काळे रंगाचे, स्टीकर व त्यामध्ये 'Show Gun, made in India' असे स्टीकर जुनी वापरती.

(II) एक काळ्या रंगाची जिन्स पॅन्ट ज्यामध्ये Fame Jeans नावाचे स्टीकर आहे. जुनी वापरती.

7] During the investigation, the statement of father was recorded on 12.07.2024. In his statement, he has stated that he knows the applicant for past 2-3 months as the applicant used to visit his house as his wife and the applicant had some monitory business. He stated that 2 months prior to the incident, the applicant had come to their house. There was some fight between the applicant and his wife and at that time he had threatened his wife that he would kill her.

8] It is further stated that on 07.07.2024 at 09:00 A.M, when he got up, his son went for meeting of Jarange Patil at around 11 A.M. and he also left to his work when his wife was alone at home. It is stated that around 01:00 P.M. he returned home, at that time his wife and the applicant was present at the house. The applicant was demanding money from his wife. Thereafter, on say of his wife to go to the work, he went for work at around 02:00 P.M. on his cycle. At 05:30 P.M., one friend of his son came to the shop and informed him that his wife has fallen down in the house and she was taken to the government hospital and that he should go there and he went to the hospital. He came to know that the wife has been hit on the head by some weapon and she is dead.

9] It is further stated by the husband of the deceased that when his son asked him in the hospital whether he has any doubt on any person, at that time, he had not expressed doubt on anybody. Thereafter when the police asked him, whether he has doubt on any person, he also did not inform the police. After long questioning by the police, he gave the name of the applicant as the person on whom he has doubt. Thereafter the information was registered against the applicant.

10] The supplementary statement of the informant

was recorded on 12.07.2024 wherein he stated that his father had not informed anything about the applicant in the hospital. It is only when the father was asked in the police station for long time, he disclosed the name of the applicant on whom he has doubt that he has committed murder of his mother.

11] Statement of Onkar Dnyaneshwar Solanke (brother of the informant) was also recorded on 13.07.2024. In his statement, he has stated that when he had visited his house prior to 6 months and there was conflict between the applicant and his mother. Some days prior when he along with his mother had gone to market and returned back, the applicant was in the house on the steps, going to the top floor, on seeing his mother jumped on her. However, his mother stepped backed up as such the applicant had fallen on the floor and injured his leg. At that time he had threatened his mother to kill her.

12] Thereafter, he has narrated similar facts as stated by his brother (informant) of events on 07.07.2024. He also mentions that his father did not initially informed them about applicant's presence in the house. Thereafter, only when the informant and his father was taken to the police station and after questioning that the father informed the name of the applicant as a suspect.

13] On further investigation the police in the remand report stated that they have recovered the mobile of the applicant and it shows that on 07.07.2024, the mobile was around 50 kms away from the place of incident at the time of incident. There is also the record of CCTV footage of the neighbour of the informant of which the transcript is on record. From the transcript, on 14:14 hours it is seen that on 07.07.2024, the husband of the deceased is walking towards his house.

14] Thereafter, accused (unidentifiable) is seen going towards the house at 14:15 with red scarf on his face on a red motorcycle. He stopped the motorcycle near the house and then he walked inside the house. On 07.07.2024 at 03:11 to 03:12 A.M. the accused is seen returning from the house with red coloured scarf on face on the red coloured motorcycle. After completion of the investigation, the charge-sheet is filed. Applicant thereafter filed an application for regular bail before the Sessions Court and the same was rejected. Thereafter the present application is filed.

15] It is the contention of the applicant that the case is based on circumstantial evidence and primarily based on the principle of last seen together. From the evidence collected, there is no recovery at the instance of the applicant, which can connect the applicant to the offence.

The red coloured motorcycle nor the red coloured scarf or the red coloured jacket visibly seen in the CCTV footage is recovered at the instance of the accused.

16] The learned counsel for applicant submits that the only statement which is of the husband of the deceased that he has seen the applicant in the house in company of the deceased. However, the same is highly suspicious and unbelievable for the following reasons:

(a) The statement of the husband was recorded on 12.07.2024 after 5 days of the incident. He has stated that on 07.07.2024 at 01:00 PM he returned to his house from work and he had seen the applicant and his wife in the house where the applicant was demanding the payment of some amount. His wife had sent him to the shop and thereafter he has left his house at 02:00 P.M. However, the CCTV footage shows that the applicant came to the house at 14:14 hours and thereafter somebody on motorcycle had come in the house wearing red coloured jacket and a red coloured scarf on a red coloured motorcycle.

(b) The identity of the person is absolutely not visible on the CCTV. Although, the husband of the deceased is seen coming to the house he is not seen leaving from the house on the CCTV. Whereas the

person who had come on motorcycle is seen leaving the house. None of the clothes are visible on the body of the accused person leaving the house of the deceased are attached from the applicant. So also, the red motorcycle is also not attached by the police.

(c) When the father was asked as to whether he has any suspicion on anybody in the hospital on 07.07.2024 by his son, the father had not informed anything. So also the police had asked his father whether he had doubt on any person and the father of the informant had not stated anything to the police. It is only after his long and sustained questioning, the father of the complainant gave the name of the applicant as a suspect. Thus, the conduct of the father is suspicious, the evidence, at best, points out that it is the father of the informant i.e. the husband of the deceased who is *prima-facie* in company of the deceased at the time of the murder and the evidence at best would suggest that the father of the informant is responsible for the offence.

17] It is also stated that the clothes seized from the applicant does not show like blood stains on his clothes. So also, the CDR shows that the applicant was 50 Kms away from the incident at the time of the incident. It is further stated since the entire case is based on the statement of the

husband of the deceased, which is unbelievable, for aforementioned reasons and thus, the applicant be granted bail.

18] Having considered the submissions of the Learned Counsel for the applicant, perused the record with the assistance of the Learned AGP. The following factors are to be noticed in the case:-

19] That on 07.07.2024 the informant has mentioned in the F.I.R. that his father informed him that on 07.07.2024 while he was at home at 02:00 P.M., the applicant (Noor Shaikh) came on a red coloured motorcycle wearing red coloured shirt, bluish pant and with a scarf hanging on his neck (Saffron coloured) and that he had driven his father out of the house by intimidating him and as such the father of the applicant went for work in the shop of Jaiswal where he was working and the applicant was in the house with his mother and that there was prior dispute of the applicant with his deceased mother the applicant was fighting with his mother for the money.

The informant in his supplementary statement dated 12.07.2024 and his brother in his statement dated 13.07.2024 has stated that in the hospital the father of the informant has not expressed any doubt or suspicion against anyone and it was only after questioning by the police, he has expressed doubt on the applicant.

20] From the evidence and the CCTV footage recovered from the neighbour's camera, it is apparent that the father of informant had come home at 02:14 P.M., thereafter another person had come on a red coloured motorcycle wearing red coloured jacket and a red coloured scarf around his neck. Thereafter the person [accused] is seen leaving the house at 03:11 to 03:12 P.M. wearing red coloured handkerchief on his face on a red coloured motorcycle.

From the CCTV footage the person seen, cannot be identified as he is wearing scarf on his face and he is completely covered. The APP has also fairly submitted that the person cannot be identified on the CCTV footage although, a person is clearly seen coming on a red coloured motorcycle wearing a red coloured scarf and going towards the house of the deceased.

21] The applicant was arrested on 08.07.2024. However, nothing is recovered at the instance of the applicant i.e. red coloured motorcycle, red coloured jacket or red coloured scarf. So also the clothes recovered from the applicant which he was wearing on the date of arrest i.e. 08.08.2024 are white shirt and a black coloured jeans pant. It is stated in the seizure panchnama that the applicant was wearing the same clothes on 07.07.2024. In the seizure panchnama, no blood stains are seen on the clothes of the

applicant. From the clothes recovered, the C.A. report is yet to be received by the prosecution.

The brother of the informant, so also, the father of the informant has stated that the applicant used to visit the house of the informant and that there were monetary transactions between the applicant and the mother of the informant and that there were threats given by the applicant to their deceased mother at prior point of time.

22] Considering the above evidence on record it is to be noted that although the person who has come on a red coloured motorcycle on 07.07.2024 is not visible, and cannot identified from the CCTV footage, even before the CCTV footage was recovered from the neighbour (i.e. on 15.07.2024) the information was given by the informant that the applicant had come to the house of the deceased on a red coloured motorcycle having a red coloured scarf around his neck.

23] Thus, at the first point there is identification of the applicant going into the house of the deceased on a red coloured motorcycle having a red coloured scarf around his neck. Thus *prima facie* the identity of the accused is made by the husband, which is corroborated by the CCTV footage having visited the house of the victim on 07.07.2024 at 02:00 P.M. and the same cannot be doubted. Although,

there is discrepancy regarding the husband's statement that the applicant was in the house. In the first instance, the husband has stated that the applicant was already in the house and later clarified that the applicant came later in the house on a red coloured motorcycle. However, on the basic fact that the applicant was present in the house on 07.07.2024 at around 02:00 P.M, cannot be doubted. As regards the husband leaving the house is not visible in the CCTV footage. It is stated by APP that the neighbour's CCTV covers only one side and that there is also another way leaving from the house.

24] *Prima facie*, it will be difficult to discard the evidence of the husband of the deceased that the applicant was present in the house at the time of incident. There is evidence from the brother of the informant, so also, from the husband of the informant that there were prior threats given by the applicant to the deceased. Considering the same this is not a case where the presence of the applicant at the spot of incident can be doubted.

25] The statement of the applicant that his mobile was 50 Kms away, and that the applicant was not at the scene of offence cannot be accepted as of today as apparently the person has entered the house of the informant in a red coloured motorcycle and as taken care that he was fully covered and his identity is not visible as

such. Thus it is possible that to create the plea of alibi that the mobile is left somewhere else. Defence would be a matter of trial but on this moment it is difficult to disbelieve the case of the prosecution. The involvement of the applicant in the crime is *prima-facie* seen Considering the same the bail application is dismissed.

26] Liberty is granted to the applicant to apply after 18 months, if the trial is not commenced.

[ARUN R. PEDNEKER]
JUDGE

RPB