

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6298 OF 2015

Sandip s/o Shivaji Chavhan,
Age-32 years, Occu:Agriculture,
R/o-Akni (Tanda), Tq-Mantha,
Dist-Jalna,
[At present in Magisterial
Custody in District Prison, Jalna]

...APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station Mantha,
Dist-Jalna

...RESPONDENT

...

Mr.S.J. Salunke Advocate for Applicant.
Mr.C.V. Dharurkar, A.P.P. for Respondent.

...

CORAM: A.I.S. CHEEMA, J.

DATE : 1ST DECEMBER, 2015

ORAL ORDER :

1. Heard learned counsel for the Applicant
and learned A.P.P. for the State. This is second
bail application filed by the Applicant. His

earlier bail application bearing Criminal Application No.4515 of 2015 was rejected by this Court on 22nd September 2015.

2. It is stated on behalf of the Applicant that now there is change of circumstance, as after the earlier order now the charge-sheet has been filed. It is stated that the other co-accused Sandip Chhagan Rathod was granted anticipatory bail in Criminal Application No.5398 of 2015 by order dated 15th October 2015 and the case of the present Applicant-accused is similar to that of Sandip Chhagan Rathod. It is stated that there was statement under Section 164 of the Code of Criminal Procedure recorded, of Laxman Gopichand Rathod, brother of the victim Bhimrao. The learned counsel has taken me through the statement of Laxman Gopichand Rathod to state that the victim has made a dying declaration to his brother also, in which the role attributed to the present Applicant and the other accused Sandip Chhagan

Rathod was similar. Learned counsel submitted that there are other similar statements of witnesses. Thus, according to the counsel, if the role attributed to Sandip Chhagan Rathod and the Applicant is similar, the Applicant should be treated similarly and should be granted bail. The learned counsel for Applicant relied on the Judgment in the case of **Menino Lopes vs. State of Goa, reported in 1995(1) Bom.C.R. 334**, to support his submission.

3. Learned counsel for the Applicant further submitted that the Applicant is ready to abide by any conditions that would be imposed by this Court and would not enter the village concerned till the trial is concluded.

4. Against this, learned A.P.P. submitted that the case of the Applicant is different from that of Sandip Chhagan Rathod. The present Applicant was named in the F.I.R. itself by the

victim, while Sandip Chhagan Rathod was not named. The A.P.P. submitted that accused Sandip Rathod took stand that the witness Narayan who named Sandip Chhagan Rathod, could have reason to falsely implicate him in view of the fact that Narayan had unsuccessfully contested election against the uncle of said Sandip Chhagan Rathod. Thus, according to the learned A.P.P., the case against the Applicant is on much stronger footing compared to Sandip Chhagan Rathod and only because Sandip Chhagan Rathod is granted bail, the Applicant cannot be granted bail.

5. In the Judgment relied on by the learned counsel for the Applicant in the case of **Menino Lopes vs. State of Goa**, cited supra, it is observed in Para 8 of Judgment as under:-

"8. We have also taken note of the fact that the other two accused persons have already been released on bail. While it cannot be a strait-jacket formula that the accused must be

released on bail if his co-accused has been so released, because the accusation against the latter may be of lesser gravity and there may be other circumstances differentiating one co-accused from the other, yet if the co-accused persons are otherwise equally placed, then there may be no good reason why an accused shall be denied bail where his co-accused has been released. This is also the view of Chief Justice Harries in Kamla Pandey (supra) where he said that "I cannot see what real danger is in granting this man bail when his co-accused has been granted bail". We have also noted that, as the record now stands, the allegation against one accused, who has already been released on bail, is probably graver than the applicant before us."

. It is clear from the above observations itself that there cannot be strait-jacket formula that accused must be released on bail if his co-accused has been so released, as the accusation against the latter may be of lesser gravity.

6. In the present matter, the record shows that the victim immediately after the incident,

when the F.I.R. was recorded, named the Applicant-accused. The incident as narrated in the F.I.R. itself showed that the other accused Bhausahab and the present Applicant having consumed liquor, were quarrelling in front of house of the victim Bhimrao and as he interfered, they had grievance against the victim and in retaliation the incident took place where Bhausahab stabbed victim and present named accused and one unknown person also beat and abused. The victim/complainant did not name the other person, who, in the later investigation, is said to be Sandip Chhagan Rathod. Looking to the fact that Applicant has been named in the F.I.R. and active role is attributed to the Applicant, I do not find that the case against Sandip Chhagan Rathod can be compared with that of the Applicant-accused. Bhausahab alone may not have been able to commit the offence and actions of applicant in furtherance of common intention cannot be overlooked. Even though the charge-sheet has been

filed, looking to the fact that there are serious allegations against the Applicant and looking to the material collected by the State, it would not be appropriate to grant bail to the present Applicant. The offence is under Section 302 of the Indian Penal Code and for reasons, also recorded in earlier order dated 22nd September 2015 and for above reasons I do not find any substance in the submissions made by the learned counsel for the Applicant-accused.

7. For the above reasons, the Application is rejected.

[A.I.S. CHEEMA, J.]