

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

CRIMINAL APPLICATION NO. 1604 OF 2016

Chand s/o Bashirsab Pathan,
Age: 36 years, Occ: Labour,
R/o. Dawangaon, Tq. Udgir,
Dist. Latur,
At present R/o. Chenna Reddy Nagar,
Amberpet, Hyderabad.

...Applicant

versus

The State of Maharashtra
Through Udgir City Police Station.

...Respondent

.....
Mr. T.M. Venjane, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 11th APRIL, 2016

ORAL ORDER :

This is an application under Section 439 of the Code of Criminal Procedure seeking regular bail.

2. After investigation in the matter is complete, the applicant is charge sheeted in the Crime No. 48 of 2015 registered with Udgir City Police Station, District Latur, for the alleged incident dated 08/04/2015, for the offence punishable under Sections 302, 326, 143, 144, 147, 148, 149, 109, 506, 324 of the Indian Penal

Code and under Section 135 of the Bombay Police Act.

3. The prosecution story as against the present applicant is, one Jubedabi w/o Yusuf Pathan lodged the first information report on 08/04/2015 alleging that the present applicant alongwith other accused persons on 08/04/2015 at about 11-00 a.m. visited her house and had given death threats to her husband Yusuf Pathan, who at the relevant time, was not present in the house. It is then claimed that all the accused persons climbed her house and removed tin sheets, which were used for ceiling.

4. It is then claimed that at about 8-00 p.m. her nephew Ajroddin was informed by one Moulavi that her husband Yusuf was assaulted and was hospitalized in Life Care Hospital at Udgir.

5. In the above referred background, Mr. Venjane, learned Counsel for the applicant, while trying to make a case for grant of bail, would urge that the accused is permanent resident of Andhra Pradesh and has relied upon certain documentary evidence that effect. According to him, even if the prosecution story as narrated in the first information report is accepted as it is, still he would submit that no specific role is attributed to the applicant-accused of participation in the crime of murder. He would then submit that in

absence of any criminal antecedents and specific role in the incident in question, the applicant is entitled to be released on bail, as he is behind the bars for about one year. He would submit that the prosecution story is based on circumstantial evidence and there is no direct evidence/eye witness to the incident in question. So as to substantiate his contentions, he has taken me through the investigation papers including charge sheet.

6. Learned A.P.P., while opposing the application for grant of bail, would submit that the applicant herein is charged with the serious offence, which is punishable with death or life imprisonment. He would then submit that the investigation as is carried out till date, as reflected from the charge sheet, depicts that the applicant herein is involved in the crime in question, particularly in the first part, which took place in the morning. He has invited my attention to the contents of the complaint so as to substantiate the same, wherein the present applicant is named as one of the accused, who was member of the group, who has issued death threats to the husband of complainant. Learned A.P.P. submits that the bail be rejected.

7. Upon perusal of the first information report, it is required to be noted that the alleged crime is in two parts; first part, according to prosecution took place in the morning of 08/04/2015 at about

11-00 a.m. at which time death threats were given to Yusuf Pathan, husband of the complainant. At that point of time, presence of present applicant is very much mentioned in the first information report.

8. It is then required to be noted that the second part of the incident is narrated to have taken place in the evening at about 8-00 p.m. So far as that part in the first information report is concerned, the complainant, based on hear say, has not named the present applicant as an accused.

9. The investigation papers depicts that if the statement of Police Constable Tukaram Balade is noted, he has stated that the accused persons namely Balekha Pathan and Arafat Pathan are the accused. He has stated that the accused himself visited police station and stated that he has assaulted the deceased with knife. The name of accused is stated to be Balekha Pathan and Arafat Pathan, whereas that of injured was Yusuf Pathan.

10. The alleged eye witness Shaikh Amer Shaikh Isak, who runs Pan Shop, has though narrated about the incident, but was unable to name the present applicant as an accused, responsible for the commission of the crime or direct participation. The other

witnesses Saddam Shaikh Makdumsab Shaikh and Shridevi Bhadrashette, whose statements are based on hearsay evidence, have not attributed any specific role to the present applicant.

11. Learned A.P.P. when confronted, has categorically stated that there is no direct evidence or any statement which connects the present applicant to the crime of murder.

12. In the background of above referred submissions, though deceased Yusuf Pathan died homicidal death, however, *prima facie*, there hardly appears to be sufficient material to connect the present applicant to the crime in question. The investigation in the matter is already complete and charge sheet is filed. There are no criminal antecedents.

13. In this background, it will be appropriate, in my opinion, to release the applicant on bail. Hence, the following order:-

: O R D E R :

(i) The applicant be released on bail, in connection with Crime No. 48 of 2015 registered with Udgir City Police Station, District Latur, for the offence punishable under Sections 302, 326, 143, 144, 147, 148, 149, 109, 506, 324 of the Indian Penal Code and

under Section 135 of the Bombay Police Act, upon executing P.R. bond of Rs.15,000/- with one surety in the like amount.

(ii) The applicant shall attend the trial regularly till its conclusion.

14. Criminal Application is allowed in above terms.

[N.W. SAMBRE, J.]