

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

909 CRIMINAL APPLICATION NO. 4460 OF 2016

AVINASH SHANKAR RATHOD

VERSUS

**THE STATE OF MAHARASHTRA
& ANR.**

.....

Mr. Rajendra Deshmukh i/b Mr. R.B.Ade,
Advocate for Applicant.

Mr. S.D.Ghayal, A.P.P. for Resp. – State.

.....

CORAM : A.M.BADAR, J.

DATE : 26th AUGUST, 2016

.....

PER COURT :

1. The applicant/accused in Crime No. 111/2016 registered at Mukramabad police station, Nanded for the offences punishable U/ss 307,395,143,147,149,326,325 of the Indian Penal Code at the instance of Kashinath Hiranman Rathod on 02/07/2016 by this application is praying for pre-arrest bail.

2. Heard learned counsel for the applicant as well as

learned A.P.P. Learned A.P.P. opposed the application by contending that the history given at Ashwini hospital, where the victim was admitted on the date of the incident, goes to show that the present applicant and co-accused forcefully administered poison to the victim. He drew my attention to the statements of police personnels, who were on the scene of occurrence after alleged forceful administration of poison to Kashinath Rathod by the present applicant and co-accused. Learned A.P.P. further drew my attention to the statement of the neighbouring field owner, wherein victim had made statement soon after the incident pointing out that the present applicant and co-accused had forcefully administered poison to him. Learned A.P.P. submits that considering the papers of investigation and the circumstances, present applicant is not entitled for bail. He further submitted that the statement of the informant could not be recorded earlier as the Doctor had certified that he is not in a position to make any statement.

3. Perused papers of investigation including the F.I.R. lodged at the instance of Kashinath Rathod on 02/07/2016. Perusal of the F.I.R. itself goes to show that Kashinath Rathod was not alone at the time of commission of the offence. His family members were very much present at the scene of occurrence and it is alleged that his family members were also injured in the incident, which took place at the instance of the present applicant and co-accused. Why the F.I.R. was not immediately lodged by any of the family member of the informant Kashinath Rathod is not explained in the papers of investigation.

4. Perusal of the F.I.R. further shows that soon after the incident of alleged forceful administration of poison to Kashinath Rathod by the present applicant and co-accused, so also when the actual assault by accused persons on the family members of Kashinath Rathod was going-on, patrolling party of police reached the spot. Police personnels in their statements u/s 161 of the Code of Criminal Procedure recorded after the F.I.R. stated that Kashinath Rathod had told them that the present applicant and co-accused had forcefully administered poison to him. Despite knowing this fact immediately after the incident, why none of the police personnel had chosen to lodge the F.I.R., is also the question which is not answered in the papers of investigation. In this context, history of admission of Kashinath Rathod to sub district hospital, Mukhed becomes relevant. After treatment at Primary Health Centre, Barhali, Kashinath Rathod was admitted to sub district hospital, Mukhed. Medical Officer has recorded the case of Kashinath Rathod to be the case of unknown poisoning. Thereafter, he was taken to Matoshri hospital and then to Ashwini hospital, Nanded where history of forceful administration of poison is said to have been disclosed by the son of Kashinath Rathod. What was the history stated at Primary Health Centre, Barhali and at Matoshri hospital is not reflected in the papers of investigation.

5. In the wake of this position reflected from the papers of investigation, *prima facie*, false implication of the present applicant in the matter of forceful administration of

poison can not be ruled out. The possibility that upon seeing the assault on his family members and on himself, out of frustration, consumption of poison by Kashinath Rathod can not be ruled out. Therefore, applicability of Section 307 of the Indian Penal Code to the case in hand is in serious doubt. It is averred by Kashinath Rathod that during the course of incident, present applicant had snatched golden ring from the finger of the informant. Considering the events which took place after the alleged incident, this contention is also not free from doubt.

6. It appears that parties were on inimical terms because of dispute over the agricultural land.

7. Considering the totality of the circumstances reflected from the papers of investigation, custodial interrogation of the present applicant in the crime in question is not warranted. Hence, the following order.

(i) The application is allowed.

(ii) In the event of his arrest in Crime No. 111/2016 registered at Mukramabad police station, Nanded for the offences punishable U/ss 307,395,143,147,149,326,325 of the Indian Penal Code, applicant Avinash s/o Shankar Rathod be released on bail on executing P.R. Bond of ₹ 15,000/- [Rupees Fifteen Thousand] and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicant shall

not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicant shall not tamper the evidence of the prosecution.

(v) The applicant shall attend the concerned police station on 04/09/2016 in between 11.00 a.m. and 1.00 p.m. and he should co-operate the Investigating Officer in the investigation of the crime in question.

[A.M.BADAR, J.]