

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 BAIL APPLICATION NO. 1178 OF 2020

BALU @ BALASAHEB S/O. ACHYUT KATE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Salunke Sudarshan J.
APP for Respondent-State : Mr. R. V. Dasalkar

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CORAM : V. K. JADHAV, J.
DATED : 03RD DECEMBER, 2020

PER COURT :-

1. The applicant is seeking regular bail in connection with Crime No. 93 of 2019 registered with Shirdhon Police Station, District Osmanabad for the offences punishable under section 302 read with 34 of IPC. His application with similar prayer below Exhibit 4 in S.C. No. 144 of 2019 came to be rejected by the learned Additional Sessions Judge-3, Osmanabad vide order dated 10.06.2020.

2. Learned counsel for the applicant submits that the investigation is over and the charge sheet has been submitted. The applicant is in jail in connection with the

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present crime since 04.07.2019. This is the first application before this Court after filing of the charge sheet. Learned counsel submits that the prosecution case entirely rests upon circumstantial evidence and there is no direct evidence in this case. Learned counsel submits that there is a circumstance in the form of last seen together. There is no further connecting evidence against the applicant. Even though there are allegations about motive, however, there is no documentary evidence to substantiate the same. Learned counsel submits that it has been alleged in the complaint that there were disputes in respect of the common *bandh*, fetching of water from the well jointly owned by the applicant and the deceased and the money transaction. However, hardly there is any evidence about the same. Learned counsel submits that there is no criminal history. The applicant is available for trial. The applicant is ready to abide the conditions, if imposed by this Court. The applicant may be released on bail.

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3. Learned APP has strongly resisted the application on the ground that though the prosecution case rests upon circumstantial evidence, however, the deceased was lastly seen alive in the company of the applicant and the other co-accused persons by several villagers around 8.45 p.m. on 02.07.2019 and lastly by one hotel owner, namely, Dhananjay Pawar at about 11.00 p.m. on 02.07.2019. Learned APP submits that there is evidence about the motive. *Prima facie* there is strong case against the applicant. The applicant may not be released on bail.

4. On going through the allegations made in the complaint and on perusal of the charge sheet, it appears that the prosecution case entirely rests upon circumstantial evidence. There are witnesses on the point that the deceased was lastly seen in the night of 02.07.2020 till 11.00 p.m. in the company of the applicant and the other co-accused persons. However, except this, there is no other connecting evidence against the applicant. Though in the morning the dead body was found, however, there is no further evidence

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to connect the applicant with the commission of murder of the deceased. Thus, considering the nature of allegations and since there is no criminal history, I am inclined to release the applicant on bail. The applicant is available for trial. Hence, following order.

O R D E R

- I. The application is hereby allowed.
- II. The applicant BALU @ BALASAHEB S/O. ACHYUT KATE be released on bail in connection with Crime No. 93 of 2019 registered with Shirdhon Police Station, District Osmanabad for the offence punishable under section 302 read with 34 of IPC on his furnishing P.B. of Rs.25,000/- with one solvent surety of the like amount on the condition that the applicant shall not tamper with the prosecution evidence in any manner.
- III. Application is accordingly disposed of.

(V. K. JADHAV, J.)

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