

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1220 OF 2020

Salim Khan @ Benglori s/o Gafar Khan
Age: 29 Yrs., occu. Labour,
R/o Gausiya Nagar, Dist.Ramnagaram,
Karnataka State
(At present is in Judicial custody
in District Prison, Parbhani) = **APPLICANT**

VERSUS

The State of Maharashtra
Through Police Station, Kotwali,
District Parbhani. = **RESPONDENT**

Mr.AV Lavte, Adv. h/for Mr. SJ Salunke, Advocate for
Applicant;

Mrs.VS Choudhari, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 25th November, 2020.

PER COURT:-

1. Present application has been filed under
Section 439 of Cr.P.C seeking regular bail in
connection with FIR No.332/2019 dated 28.10.2019
registered with Kotwali Police Station, Dist.
Parbhani for the offences punishable under Sections
302, 323, 34 of IPC. The applicant has been
arrested in connection with the aforesaid crime on
5.11.2020. His application for bail came to be
rejected by learned Additional Sessions Judge,

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Parbhani, vide order dated 11.9.2020.

2. Heard learned Advocate and learned APP for respective parties.

3. It has been vehemently submitted on behalf of the applicant that the prosecution case entirely rests upon the circumstantial evidence and there is no eye witness to the incident. The applicant has no nexus with the alleged crime and he has been falsely roped in the crime. The learned Advocate further submits that there are witnesses only to the effect that on 27.10.2019 at about 6.00 pm, quarrel had taken place between the applicant, co-accused Saleem Jadibuti on one side and the deceased on other side behind the public lavatory of the Corporation and except that there is no further connecting evidence about actual incident of murder. The learned Advocate further submits that even there is reference in the complaint that in the night of 27.10.2019 and 28.10.2019 the deceased was seen at about 01.30 am to 2.00 am while proceeding on his bicycle near Dargah and in view of the same, the statement made in the form of

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extra-judicial confession by witness Shaikh Ajim @ Bambaiyya Shaikh would be meaningless. It is further submitted that the co-accused Shaikh Akhil @ Sameer s/o Shaikh Saleem has been released on bail by this court on 7.8.2020 in Bail Application No. 432/2020 and on the ground of parity the applicant deserves to be released on bail.

4. Per contra, learned APP strongly objected the application on the ground that at about 06.00 pm on 27.10.2019, in the quarrel behind the corporation public lavatory, present applicant and co-accused Saleem Jadibutti extended beating to the deceased and also threatened him. Learned APP further submits that in presence of witness Shaikh Ajim @ Bambaiyya Shaikh, co-accused Saleem Jadibuti had made an extra-judicial confession and informed to him that the present applicant murdered the deceased Shaikh Jaker. Learned APP submits that the applicant does not deserve to be released on bail.

5. Having gone through the allegations made in the complaint and upon perusal of the charge

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sheet, it appears that the prosecution case entirely rests upon the circumstantial evidence and there is no direct evidence in this case. Though there is witness about the quarrel that had taken place between the applicant, co-accused Saleem Jadibuti on one side and the deceased on other side behind Corporation lavatory, however, there is no further connecting evidence against the applicant. There is a specific reference in the complaint that in between night of 27.10.2019 to 28.10.2019 one Autovala Babaloo, whose statement was not recorded by the police, seen the deceased Jaker at about 01.30 to 02.00 am proceeding on his bicycle from the side of Dargah. Thus, considering the same, extra-judicial confession allegedly made before Shaikh Ajim @ Bambaiyya on 27.10.2019 at about 08.00 pm appears to be improbable. Thus, considering the entire aspect of the case, the applicant deserves to be released on bail. Hence, following order, -

ORDER

- i. The Bail Application is hereby allowed.
- ii. The applicant be released in

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connection with Crime No.332/2019 dated 28.102019 registered with Kotwali Police Station, Dist. Parbhani for the offences punishable under Sections 302, 323, 34 of IPC, on furnishing PB of Rs.20,000/- with one solvent surety of the like amount.

iii. The applicant shall not tamper with the evidence of the prosecution in any manner.

iv. Bail before the trial court.

(SMT. VIBHA KANKANWADI,J.)

BDV