

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1232 OF 2020

Shailesh s/o Sanjay Londhe

... Applicant

Versus

The State of Maharashtra

... Respondent

.....
Mr. Shaikh Wajeed Ahmed, Advocate for applicant.
Mr. Y. G. Gujarathi, App for respondent – State.
.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 26-11-2020

ORDER :

. Present application has been filed under Section 439 of the Code of Criminal Procedure by original accused No.2 i.e. present applicant who has been arrested in Crime No.217 of 2020, by Gangakhed Police Station for the offences punishable under Sections 302, 307, 108, 109, 120-B of the Indian Penal Code.

2. Heard learned Advocate Mr. Shaikh Wajeed Ahmed for applicant and learned APP Mr. Y. G. Gujarathi for respondent – State.

3. It has been vehemently submitted on behalf of the applicant that perusal of the First Information Report would show that the present applicant was not even present when the incident had taken place. It is only the say of the

informant that there was rivalry of the deceased with accused No.5 – Sanjay Parave and it is his suspicion that on the instigation by accused No.5, accused Nos.1 to 4 have caused murder of deceased. However, it appears from the earlier incident which had taken place only about 15 to 20 minutes ago that it was on account of some dispute between deceased and accused No.1 - Bhaiyyasaheb Jadhav. It was a trifle quarrel between them which was then resulted in assault by knife. No specific role is attributed to the applicant, though his presence has been stated. Further, this Court has granted bail to co-accused Sanjay Vyankatrao Parave, Shaikh Akbar Shaikh Dilavar and Babanrao Lakshmanrao Pandit in Bail Application Nos.493 of 2020, 979 of 2020 and 984 of 2020 respectively. Therefore, on the ground of parity also, the applicant is seeking bail. Substantial part of the investigation is over and, therefore, further physical custody of the applicant is not required. Hence, he be released on bail.

4. Learned Additional Public Prosecutor submitted that it is not in dispute that the daughter of accused No.5 was tried to be kidnapped by the deceased and, therefore, there was enmity between deceased and accused No.5. Accused No.5 had given threats to deceased that he would eliminate the deceased on one day. Therefore, he has conspired with accused No.1 to 4 and caused the incident to happen, therefore, it is the present accused who is in fact the important/main accused in the case. Release of the present applicant will cause law and order problem. The weapon used in the commission of the crime

has been recovered from accused No.1, so also the other recovery has been done. Therefore, there is ample evidence against the present applicant which disentitles him from bail.

5. At the outset, it is to be noted that the charge sheet has been filed and it presupposes that the investigation is over. Therefore, whatever evidence has been collected is required to be seen while assessing this application. It will not be out of place to mention here that when this Court had granted bail to the co-accused – Sanjay Vyankatrao Parave on 31-07-2020 in Bail Application No.493 of 2020, at that time, the charge sheet was not filed. It came to be filed on 28-07-2020, but was not placed before the Court. However, when the application for bail came to be granted in respect of other two co-accused on 22-09-2020, the charge-sheet was before this Court and all the aspects involved were considered by this Court. The present applicant had filed application for bail at Exhibit-16 in Sessions Trial No.36 of 2020 and thereby it can be seen that the case has been already committed to the Court of Sessions. In spite of the bail order passed by this Court in Bail Application No.979 of 2020 was filed on record, yet, the learned Trial Judge has just brushed it aside stating that the role attributed to the present applicant is different than role attributed to the applicant in that case. What is the exact difference between the role has not been stated. When the charge-sheet was already before the learned Trial Judge, he has passed a cryptic order which is only half page and such orders are

definitely required to be deprecated. When the ground of parity is pressed into service, then the concerned Court is definitely supposed to elaborate what is the difference in the role. Here, it is to be noted that a common order was passed in Bail Application Nos.979 of 2020 and 984 of 2020. Bail Application No.984 of 2020 was filed by one Babanrao Lakshmanrao Pandit. If we peruse the FIR, then it can be seen that the informant has stated that when accused No.1 was assaulting deceased by knife and the informant was trying to rescue deceased, at that time, Baban Pandit and present applicant – Shailesh came. Baban was holding black colour pipe and he assaulted Shaikh Gaus i.e. deceased. Further, as regards Shailesh is concerned, his FIR is silent. That means, simple presence of the present applicant has been stated rather more role was attributed to Baban and under such circumstance, when Baban has been granted bail by this Court, the learned Trial Judge ought to have allowed the application. It appears that the learned Trial Judge proceeded with sole intention to reject the application and passed a cryptic order. This approach is definitely not a judicious approach. Unnecessarily, the parties are required to come to the High Court.

6. Even independently, the facts are considered. Perusal of the FIR as well as the alleged eye-witnesses would show that this applicant was not present when the alleged incident took place. It is the say of the prosecution that the present applicant i.e. accused No.2 has conspired with accused Nos.1, 3 to 5 and

caused the incident to happen. At this stage, except bare statement by some of the witnesses, there is nothing to indicate prior meeting of mind of the accused persons. Perusal of the FIR would show that the informant was along with deceased and he has an eye-witness to the incident. He says that he along with deceased and others were standing on the road at about 7.30 p.m. on 30-04-2020. Accused No.1 came along with his friend on motorcycle, and the car near which deceased was standing, received the dash from the motorcycle of accused No.1. There was heat exchange of words between deceased and accused No.1, however, they were separated by those persons standing. Within 15 to 20 minutes, accused No.1 came along with accused No.3 on motorcycle, however, at that time, informant was standing at a distance from deceased. He came near deceased when he found that accused No.1 was assaulting deceased by means of knife. He then expressed that the real reason of the quarrel was that there was previous enmity between accused No.5 and deceased, and accused No.5 had given threats to kill to the deceased and, therefore, on the say of accused No.5, accused Nos.1 to 4 had attacked deceased by knife. Important point to be noted is that neither in the FIR nor in the statement of the witnesses, they are explaining as to when the alleged dispute between accused No.5 and deceased started. There has to be some nexus, and that too immediate nexus so that to connect the two facts, and for that purpose it was necessary for the prosecution to point out that the said incident which gave rise to the dispute

between deceased and accused No.5 had taken place in a near past. Thus, it can be seen that except the words, there is nothing at present against the applicant. There is recovery of the clothes of the applicant which is stated to have been sent for chemical analysis, but the said report of the chemical analysis has not been produced and, therefore, the further physical custody of the applicant is not required. When the co-accused similarly situated, rather having more role than the present applicant, have been granted bail by this Court, then on the ground of parity also, he deserves to be released on bail. His liberty cannot be curtailed with such statements which are appearing in the FIR and statements of witnesses. Hence, the following order :-

ORDER

- 1) Application is hereby allowed.
- 2) Applicant – Shailesh s/o Sanjay Londhe be released on P.R. of Rs.30,000/- (Rupees Thirty Thousand only) with two sureties of Rs.15,000/- each (Rupees Fifteen Thousand only).
- 3) The applicant shall not tamper with the evidence of the prosecution in any manner.
- 4) The applicant shall attend police station on every Tuesday and Friday between 10.00 a.m. to 02.00 p.m., till filing of charge-sheet.
- 5) Bail before Trial Court.

[SMT. VIBHA KANKANWADI, J.]